

*BLM Director's Protest Resolution  
Report*

**Bighorn Basin (Wyoming)  
Greater Sage-Grouse  
Resource Management Plan /  
Final Environmental Impact  
Statement**

September 15, 2015



## Contents

Reader's Guide.....	3
List of Commonly Used Acronyms .....	4
Protesting Party Index.....	5
Issue Topics and Responses.....	7
FLPMA - General.....	7
Valid Existing Rights .....	10
Multiple Use Mandate .....	15
Consistency with State and Local Plans.....	19
Range of Alternatives.....	22
Purpose and Need.....	25
Response to Public Comments.....	27
Supplemental EIS.....	29
Best Available Science.....	35
Public Participation .....	43
Impacts – Greater Sage-Grouse.....	50
Impacts – Air Quality.....	53
Impacts – Oil and Gas .....	55
Impacts – Recreation.....	56
Impacts – Water .....	60
Impacts – Grazing .....	61
Impacts - Other.....	63
Impacts – Lands with Wilderness Characteristics.....	64
GRSG - General .....	66
GRSG - Density and Disturbance Cap.....	69
GRSG - Required Design Features .....	70
GRSG - Mitigation.....	71
GRSG - Livestock Grazing .....	74
Energy Policy Act of 2005 .....	77
Air Quality Climate Change Noise .....	80
Areas of Critical Environmental Concern.....	83
Fluid Minerals .....	85
Solid and Non-Energy Leasable Minerals .....	89
Lands with Wilderness Characteristics .....	91
Wild and Scenic Rivers .....	95
Recreation.....	95
Wild Horses and Burros .....	97
Travel Management.....	99
Clarifications and Clerical Errors .....	102

## Reader's Guide

### How do I read the Report?

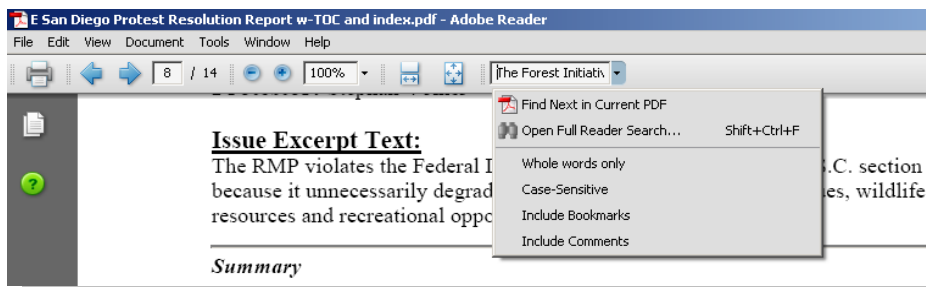
The Director's Protest Resolution Report is divided into sections, each with a topic heading, excerpts from individual protest letters, a summary statement (as necessary), and the Bureau of Land Management's (BLM's) response to the summary statement.

### Report Snapshot

<b>Issue Topics and Responses</b> NEPA	Topic heading
	Submission number
<b>Issue Number:</b> PP-MT-BIGHORN-GRSG-15	Protest issue number
<b>Organization:</b> The Forest Initiative	Protesting organization
<b>Protester:</b> John Smith	Protester's name
<b>Issue Excerpt Text:</b> Rather than analyze these potential impacts, as required by NEPA, BLM postpones analysis of renewable energy development projects to a future case-by-case analysis.	Direct quote taken from the submission
<b>Summary</b>	General statement summarizing the issue excerpts (optional).
There is inadequate NEPA analysis in the PRMP/FEIS for renewable energy projects.	
<b>Response</b>	BLM's response to the summary statement or issue excerpt if there is no summary.
Specific renewable energy projects are implementation-level decisions rather than RMP-level decisions. Upon receipt of an application for a renewable energy project, the BLM would require a site-specific NEPA analysis of the proposal before actions could be approved (FEIS Section 2.5.2, p. 2-137). Project specific impacts would be analyzed at that time (including impacts to surrounding properties), along with the identification of possible alternatives and mitigation measures.	

### How do I find my Protest Issues and Responses?

1. Find your submission number on the protesting party index which is organized alphabetically by protester's last name.
2. In Adobe Reader search the report for your name, organization or submission number (do not include the protest issue number). Key word or topic searches may also be useful.



## *List of Commonly Used Acronyms*

<b>ACEC</b>	Area of Critical Environmental Concern	<b>IRA</b>	Inventoried Roadless Area
<b>BA</b>	Biological Assessment	<b>KOP</b>	Key Observation Points
<b>BLM</b>	Bureau of Land Management	<b>LMP</b>	Land Management Plan
<b>BMP</b>	Best Management Practice	<b>MIC</b>	Management Indicator Communities
<b>BE</b>	Biological Evaluation	<b>MIS</b>	Management Indicator Species
<b>BO</b>	Biological Opinion	<b>MOU</b>	Memorandum of Understanding
<b>CAA</b>	Clean Air Act	<b>MUSY</b>	Multiple Sustained Yield Act
<b>CEQ</b>	Council on Environmental Quality	<b>NEPA</b>	National Environmental Policy Act of 1969
<b>CFR</b>	Code of Federal Regulations	<b>NHPA</b>	National Historic Preservation Act of 1966, as amended
<b>COA</b>	Condition of Approval	<b>NOA</b>	Notice of Availability
<b>CSP</b>	Concentrated Solar Power	<b>NOI</b>	Notice of Intent
<b>CSU</b>	Controlled Surface Use	<b>NRHP</b>	National Register of Historic Places
<b>CWA</b>	Clean Water Act	<b>NSO</b>	No Surface Occupancy
<b>DEIS/DRMPA</b>	Draft Environmental Impact Statement /Draft Resource Management Plan Amendment	<b>OHV</b>	Off-Highway Vehicle (also referred to as ORV, Off Road Vehicles)
<b>DM</b>	Departmental Manual (Department of the Interior)	<b>PA</b>	Preliminary Assessment
<b>DOI</b>	Department of the Interior	<b>PAC</b>	Priority Areas for Conservation
<b>EA</b>	Environmental Assessment	<b>PHMA</b>	Priority Habitat Management Area
<b>EIR</b>	Environmental Impact Report	<b>PPA</b>	Power Purchase Agreement
<b>EIS</b>	Environmental Impact Statement	<b>RDF</b>	Required Design Features
<b>EO</b>	Executive Order	<b>RFDS</b>	Reasonably Foreseeable Development Scenario
<b>EPA</b>	Environmental Protection Agency	<b>RMP</b>	Resource Management Plan
<b>ESA</b>	Endangered Species Act	<b>ROD</b>	Record of Decision
<b>FEIS</b>	Final Environmental Impact Statement	<b>ROW</b>	Right-of-Way
<b>FEIS/PRMPA</b>	Final Environmental Impact Statement /Proposed Resource Management Plan Amendment	<b>RPA</b>	Forest and Rangeland Renewable Resources Planning Act
<b>FLPMA</b>	Federal Land Policy and Management Act of 1976	<b>SFA</b>	Sagebrush Focal Area
<b>FO</b>	Field Office (BLM)	<b>SO</b>	State Office (BLM)
<b>FWS</b>	U.S. Fish and Wildlife Service	<b>SUA</b>	Special Use Authorization
<b>GHMA</b>	General Habitat Management Area	<b>SUP</b>	Special Use Permit
<b>GIS</b>	Geographic Information Systems	<b>T&amp;E</b>	Threatened and Endangered
<b>IB</b>	Information Bulletin (BLM)	<b>USC</b>	United States Code
<b>IM</b>	Instruction Memorandum	<b>USDA</b>	U.S. Department of Agriculture
		<b>USGS</b>	U.S. Geological Survey
		<b>VRM</b>	Visual Resource Management
		<b>WA</b>	Wilderness Area
		<b>WSA</b>	Wilderness Study Area
		<b>WSR</b>	Wild and Scenic River(s)

### *Protesting Party Index*

<b>Protester</b>	<b>Organization</b>	<b>Submission(s) Number</b>	<b>Determination</b>
Kyle Wilson	Wyoming Wilderness Association	PP-WY-BIGHORN-GRSG-15-01	Denied – Issues and Comments
R. Jeff Richards	Rocky Mountain Power (PacifiCorp)	PP-WY-BIGHORN-GRSG-15-02	Denied – Issues and Comments
Loren Grosskopf	Local Government Cooperating Agencies	PP-WY-BIGHORN-GRSG-15-03	Denied – Issues and Comments
Dru-Bower Moore	Devon Energy Corporation	PP-WY-BIGHORN-GRSG-15-04	Denied – Issues and Comments
Mike Henderson	Marathon Oil Company	PP-WY-BIGHORN-GRSG-15-05	Denied – Issues and Comments
Michael James	Denbury Onshore	PP-WY-BIGHORN-GRSG-15-06	Dismissed – Comments Only
Richard Kroger	Individual	PP-WY-BIGHORN-GRSG-15-07	Denied – Issues and Comments
Erik Molvar	WildEarth Guardians	PP-WY-BIGHORN-GRSG-15-08	Denied – Issues and Comments
Laura Skaer	American Exploration and Mining Association	PP-WY-BIGHORN-GRSG-15-09	Denied – Issues and Comments
Bret Sumner	Beatty and Wozniak for Exxon/Mobil and XTO Energy	PP-WY-BIGHORN-GRSG-15-10	Denied – Issues and Comments
Dan Heilig	Wyoming Outdoor Council	PP-WY-BIGHORN-GRSG-15-11	Denied – Issues and Comments
Esther Wagner	Petroleum Association of Wyoming	PP-WY-BIGHORN-GRSG-15-12	Denied – Issues and Comments
Dana Sander	Northwest Wyoming OHV Alliance	PP-WY-BIGHORN-GRSG-15-13	Denied – Issues and Comments
Travis Bruner	Western Watersheds Project	PP-WY-BIGHORN-GRSG-15-14	Denied – Issues and Comments
Mark Salvo	Defenders of Wildlife	PP-WY-BIGHORN-GRSG-15-15	Denied – Issues and Comments
Deniz Bolbol	American Wild Horse Preservation	PP-WY-BIGHORN-GRSG-15-16	Denied – Issues and Comments
Joseph Sylvester	Individual	PP-WY-BIGHORN-GRSG-15-17	Denied – Issues and Comments
Matthew Mead	Governor, State of Wyoming	PP-WY-BIGHORN-GRSG-15-18	Denied – Issues and Comments
Mike Best	Avian Power Line Interaction Committee	PP-WY-BIGHORN-GRSG-15-19	Denied – Issues and Comments
Craig Kauffman	Safari Club International	PP-WY-BIGHORN-GRSG-15-20	Dismissed – Comments Only

Jenny DeSarro	Greater Yellowstone Coalition	PP-WY-BIGHORN-GRSG-15-21	Denied – Issues and Comments
Holly Kennedy	Wyoming Farm Bureau Federation	PP-WY-BIGHORN-GRSG-15-22	Dismissed – Comments Only
Rick Magstadt	WYO-BEN	PP-WY-BIGHORN-GRSG-15-23	Denied – Issues and Comments
Nada Culver	The Wilderness Society	PP-WY-BIGHORN-GRSG-15-24	Denied – Issues and Comments

## *Issue Topics and Responses*

### *FLPMA - General*

**Issue Number:** PP-WY-BIGHORN-GRSG-15-08-2

**Organization:** WildEarth Guardians

**Protestor:** Erik Molvar

**Issue Excerpt Text:** The ability to adopt post-leasing mitigation measures (see 43 CFR § 3101.1-2) is quite broad, as all reasonable measures not inconsistent with a given lease may be imposed by the BLM. This is particularly true given that the BLM, pursuant to FLPMA, must manage public lands in a manner that does not cause either “undue” or “unnecessary” degradation. 43 USC §1732(b). Put simply, the failure of BLM to study and adopt these types of mitigation measures, especially when feasible and economic, means that the agency is proposing to allow this project to go forward with unnecessary and/or undue impacts to public lands, in violation of FLPMA.

**Issue Number:** PP-WY-BIGHORN-GRSG-15-08-3

**Organization:** WildEarth Guardians

**Protestor:** Erik Molvar

**Issue Excerpt Text:** The BLM does not propose to seek withdrawal of important GRSG habitats from locatable mineral entry; considering more than a million acres of Priority Habitat, some 5,263 acres in PHMA and 42,887 acres in GHMA are proposed for withdrawal for other reasons. FEIS at 2-9. Given that the Wyoming BLM’s position (erroneous, yet driving project policy) is that they have little to no authority to regulate the development of locatable mineral mining claims, withdrawal from future mineral entry offers the greatest certainty the agency can offer that threats to GRSG (at least in

the future) will be dealt with. This represents yet another example of the BLM failing to provide adequate regulatory mechanisms to address a threat to GRSG habitats and populations in the areas where that threat is most extreme. In effect, BLM fails to address the threats of locatable mineral development in areas where that threat is greatest. This violates FLPMA and BLM Sensitive Species policy.

**Issue Number:** PP-WY-BIGHORN-GRSG-15-10-6

**Organization:** Beatty and Wozniak for Exxon/Mobil and XTO Energy

**Protestor:** Bret Sumner

**Issue Excerpt Text:** XTO protests the plan’s imposition of management restrictions that exceed the statutory authority of the BLM under FLPMA, particularly for a species not listed as threatened or endangered under the Endangered Species Act (ESA).

**Issue Number:** PP-WY-BIGHORN-GRSG-15-10-7

**Organization:** Beatty and Wozniak for Exxon/Mobil and XTO Energy

**Protestor:** Bret Sumner

**Issue Excerpt Text:** ESA Section 7 consultation is not applicable to species like the GRSG that are not listed under the ESA. Even under Section 7 consultation of the ESA, while a jeopardy analysis looks to whether affects may jeopardize the existence of an entire species, or appreciably affect the recovery of a species, there are significant legal limitations of this analytic framework. While operators must mitigate impacts, and

can commit to conservation measures that would result in a benefit to the species, the FWS and BLM cannot impose requirements that require species recovery. This holds even more so for species where Section 7 consultation of the ESA is not applicable, and holds true within the context of BLM's statutory requirements, and limitations, pursuant to FLPMA. Moreover, FWS has not developed a recovery plan pursuant to the ESA, and the BLM and FWS cannot utilize the NEPA process for a land use plan amendment to create a de facto recovery plan in violation of FLPMA.

**Issue Number:** PP-MT-BILLINGSPOMPEYS-GRSG-15-12-18

**Organization:** Petroleum Association of Wyoming / Western Energy Alliance

**Protestor:** Esther Wagner

**Issue Excerpt Text:** The Proposed plan confirms that a “net conservation gain” is beyond the BLM’s authority under FLPMA. The BLM does not assert that a “net conservation gain” is needed to avoid unnecessary or undue degradation.

### **Summary:**

The BLM has overstepped its jurisdiction and authority under FLPMA by crafting a GRSG management strategy that:

- uses a non-legislated standard of “net conservation gain”, creating a de facto recovery plan that exceeds the “unnecessary or undue degradation” standard; and
- asserts ESA-like authority for the BLM by mandating measures to ensure species recovery.

The BLM has failed to uphold its authority and legislated mandate under FLPMA to avoid unnecessary or undue degradation of GRSG habitat by failing to recommend the withdrawal of more hard rock minerals from development and failing to impose post-leasing oil and gas development stipulations to prevent undue or unnecessary degradation of public lands.

### **Response:**

The Federal Land Policy and Management Act (FLPMA) details the BLM’s broad responsibility to manage public lands and engage in land use planning to direct that management. The BLM Land Use Planning Handbook, H-1610, directs that land use plans and plan amendment decisions are broad-scale decisions that guide future land management actions and subsequent site-specific implementation decisions. A primary objective of the BLM Special Status Species policy is to initiate proactive conservation measures that reduce or eliminate threats to Bureau sensitive species to minimize the likelihood of and need for listing of the species under the ESA (BLM Manual Section 6840.02.B).

The Bighorn Basin PRMP/FEIS specifically addresses the goals, objectives, and conservation measures needed to conserve GRSG and to respond to the potential of its being listed (see Section 1.2, Purpose and Need). The BLM’s planning process allows for analysis and consideration of a range of alternatives to conserve, enhance, and restore GRSG habitat and to eliminate, reduce, or minimize threats to this habitat to ensure a balanced management approach.

Additionally, the BLM developed the Bighorn Basin PRMP/FEIS with involvement from cooperating agencies, including Federal agencies (USFS, EPA), state agencies (Governor’s Office, Department of Agriculture, Department of Environmental Quality, Game and Fish



Department, others), and tribal governments to ensure that a balanced multiple-use management strategy to address the protection of GRSG while allowing for utilization of renewable and nonrenewable resources on the public lands.

The introduction to the Range of Alternatives in the Bighorn Basin PRMP/FEIS, Section 2.3.2, states that all alternatives (except the no-action alternative) seek to “[m]aintain and/or increase GRSG abundance and populations depend in collaboration with other conservation partners.”

The net conservation gain mitigation standard is fully consistent with the BLM’s authority under FLPMA. The proposed plan provides, in undertaking BLM and Forest Service management actions, and, consistent with valid existing rights and applicable law, in authorizing third party actions that result in habitat loss and degradation, the BLM and Forest Service will require and ensure mitigation that provides a net conservation gain to the species, including accounting for any uncertainty associated with the effectiveness of such mitigation. As is discussed further in the GRSG-Mitigation section of this protest response report, this is consistent with the BLM’s authority as described in FLPMA (which is not limited to preventing unnecessary or undue degradation). It is also consistent with BLM Manual 6840 mentioned above because it eliminates threats to GRSG and its habitat.

The proposed plan does not allow unnecessary or undue degradation. Section 302(b) of FLPMA requires that “in managing the public lands the Secretary [of the Interior] shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands.” The Bighorn Basin PRMP/FEIS provides for the balanced management of the public lands in the planning area. In developing the Bighorn Basin PRMP/FEIS, the BLM fully complied with its planning regulations (43 CFR 1610), the requirements of NEPA, and other statutes, regulations, and Executive Orders related to environmental quality. The Bighorn Basin PRMP/FEIS identifies appropriate allowable uses, management actions, and other mitigation measures that prevent the unnecessary or undue degradation of public lands.

In Section 2.3.2, the Bighorn Basin PRMP/FEIS describes the rationale used for determining a range of alternatives for GRSG management. For this planning effort, the BLM considered a wide range of alternatives for mineral and oil and gas development that include appropriate mitigation measures to avoid unnecessary or undue degradation. Goals MR-1 through MR-5, (see page 2-16), detail the BLM’s plan to ensure protection of GRSG and avoid unnecessary or undue degradation: “Where a proposed fluid mineral development project on an existing lease could adversely affect GRSG populations or habitat, the BLM will work with the lessees, operators, or other project proponents to avoid, reduce and mitigate adverse impacts to the extent compatible with lessees’ rights to drill and produce fluid mineral resources. The BLM will work with the lessee, operator, or project proponent in developing an APD for the lease to avoid and minimize impacts to sage-grouse or its habitat and will ensure that the best information about the GRSG and its habitat informs and helps to guide development of such Federal leases.” The analysis of the alternatives that inform these decisions in mineral resources are found in Section 4.2, from pages 4-68 through 4-119.

The Bighorn Basin PRMP/FEIS will not result in “unnecessary or undue degradation of public lands.

### *Valid Existing Rights*

**Issue Number:** PP-WY-BIGHORN-GRSG-15-02-3

**Organization:** Rocky Mountain Power (PacifiCorp)

**Protestor:** R. Jeff Richards

**Issue Excerpt Text:** The Wyoming Bighorn Basin LUPA (Chapter 4, page 338) identifies hard and soft adaptive management triggers for GRSG populations and habitat and specifies the appropriate management responses. The plan also describes that if triggers are met, more restrictive management actions would be implemented. Rocky Mountain Power requests that operations and maintenance activities be considered exempt from these triggers as a condition of the valid and existing rights.

In the LUPAs, pipeline restrictions and how they would pertain to operation and maintenance of existing facilities is vague. It is unclear what activities may take place during the seasonal buffers. The seasonal buffers outlined would not provide sufficient time during the year to appropriately maintain a natural gas pipeline.

Additionally, what constitutes “ground disturbance” is not clearly identified and could hinder regular pipeline maintenance. Maintenance for all types of existing infrastructure must still be allowed as an excepted activity from proposed triggers.

**Issue Number:** PP-WY-BIGHORN-GRSG-15-04-1

**Organization:** Devon Energy Corporation

**Protestor:** Dru-Bower Moore

**Issue Excerpt Text:** Devon protests the BLM’s decision to impose new restrictions on existing federal oil and gas leases as Conditions of Approval (COAs).

**Issue Number:** PP-WY-BIGHORN-GRSG-15-04-2

**Organization:** Devon Energy Corporation

**Protestor:** Dru-Bower Moore

**Issue Excerpt Text:** Devon protests the BLM’s imposition of new restrictions that are inconsistent with existing leases for two primary reasons. First, as described in more detail below, the BLM does not have the authority to impose new restrictions on Devon’s valid existing leases under the Federal Land Policy and Management Act of 1976 (FLMPA). Such leases were issued pursuant to the terms of the existing plan, or prior to said plan and the enactment of FLPMA, and the BLM cannot modify the terms of those leases through a RMP revision. Second, Devon’s leases constitute valid existing contracts that cannot be unilaterally modified by the BLM.

**Issue Number:** PP-WY-BIGHORN-GRSG-15-04-21

**Organization:** Devon Energy Corporation

**Protestor:** Dru-Bower Moore

**Issue Excerpt Text:** It would be inappropriate for the BLM to preclude all production operations in crucial winter range areas. Such a decision would essentially preclude year-round production operations and would lead to a significant decrease in domestic energy production. Moreover, many species such as pronghorn

and mule deer have been found to habituate to increased traffic so long as the movement remains predictable. See Reeve, A.F. 1984, Environmental Influences on Male Pronghorn Home Range and Pronghorn Behavior, PhD. Dissertation; Irby, L.R. et al., 1984; “Management of Mule Deer in Relation to Oil and Gas Development in Montana’s Overthrust Belt”, Proceedings III: Issues and Technology in the Management of Impacted Wildlife. To the extent the BLM intends to apply the new restriction on existing leases, the BLM could be violating existing lease or taking private property without just compensation. The BLM must ensure that existing lease rights will be maintained and that production operations are allowed to continue throughout the year.

**Issue Number:** PP-WY-BIGHORN-GRSG-15-03-3

**Organization:** Devon Energy Corporation  
**Protestor:** Dru-Bower Moore

**Issue Excerpt Text:** The proposed addition of new restrictions, such as raptor buffers, GRSG noise restrictions, cultural site buffers, trail buffers, required design features, or additional unreasonable restrictions to existing leases is impermissible because it exceeds the BLM’s legal authority under FLPMA. By attempting to impose these restrictions on existing leases, the BLM is proposing to modify Devon’s existing lease rights through its land use planning process. Such a result is not permissible because the authority conferred in FLPMA is expressly made subject to valid existing rights. Pursuant to FLPMA, all BLM actions, such as authorization of Resource Management Plans, are “subject to valid existing rights.” 43 USC § 1701 note (h); see also 43 CFR § 1610.5-3(b) (The BLM is required to recognize valid existing lease rights). Thus,

pursuant to federal law, the BLM cannot terminate, modify, or alter any valid or existing property rights. 43 USC § 1701 note (h); see also 43 CFR § 1610.5-3(b). Devon commented on the BLM’s inability to modify existing lease rights through the land use planning process.

**Issue Number:** PP-WY-BIGHORN-GRSG-15-03-4

**Organization:** Devon Energy Corporation  
**Protestor:** Dru-Bower Moore

**Issue Excerpt Text:** The BLM’s Land Use Planning Manual mandates the protection of existing lease rights. “All decisions made in land use plans, and subsequent implementation decisions, will be subject to valid existing rights. This includes, but is not limited to, valid existing rights associated with oil and gas leases . . . .” See BLM Manual 1601 – Land Use Planning, 1601.06.G (Rel. 1-1666 11/22/00). The BLM must comply with the provisions of its planning manual and recognize existing rights.

**Issue Number:** PP-WY-BIGHORN-GRSG-15-03-5

**Organization:** Devon Energy Corporation  
**Protestor:** Dru-Bower Moore

**Issue Excerpt Text:** The BLM’s Instruction Memorandum 92-67 similarly states that “[t]he lease contract conveys certain rights which must be honored through its term, regardless of the age of the lease, a change in surface management conditions, or the availability of new data or information. The contract was validly entered based upon the environmental standards and information current at the time of the lease issuance.” As noted in the BLM’s Instruction Memorandum, the lease constitutes a contract between the federal

government and the lessee, which cannot be unilaterally altered or modified by the BLM.

**Issue Number:** PP-WY-BIGHORN-GRSG-15-10-1

**Organization:** Beatty and Wozniak for Exxon/Mobil and XTO Energy

**Protestor:** Bret Sumner

**Issue Excerpt Text:** Here, the Bighorn plan proposes to impose new lease stipulations through permit COAs on valid existing leases, action that vastly exceeds XTO's original lease contract terms. For example, the plan proposes requiring compensatory mitigation to a net conservation gain standard. Such management prescriptions would unduly and unreasonably restrict XTO's right and ability to develop its leases.

**Issue Number:** PP-WY-BIGHORN-GRSG-15-10-2

**Organization:** Beatty and Wozniak for Exxon/Mobil and XTO Energy

**Protestor:** Bret Sumner

**Issue Excerpt Text:** The Bighorn plan's mandate for compensatory mitigation for any disturbance within GRSG habitat in order to provide a net conservation gain is unduly burdensome, constrains XTO's ability to develop its Federal oil and gas leases, is contrary to valid existing rights and exceeds BLM's authority under FLPMA.

**Issue Number:** PP-WY-BIGHORN-GRSG-15-10-3

**Organization:** Beatty and Wozniak for Exxon/Mobil and XTO Energy

**Protestor:** Bret Sumner

**Issue Excerpt Text:** With the Bighorn plan, however, the BLM is, in effect, disregarding economic impacts and instead planning to revise and restrict XTO's valid existing lease rights

through the imposition of a net conservation gain standard, development and disturbance caps, and additional restrictive measures added to the proposed plan since release of the draft document.

**Issue Number:** PP-WY-BIGHORN-GRSG-15-12-10

**Organization:** Petroleum Association of Wyoming / Western Energy Alliance

**Protestor:** Esther Wagner

**Issue Excerpt Text:** Section 3101.1-2, 43 CFR states that the BLM may impose "reasonable mitigation measures . . . to minimize adverse impacts . . . to the extent consistent with lease rights granted." The BLM, however, has expressly recognized that this regulation does not allow them to expand the scope of stipulations attached to leases upon issuance. In the Federal Register preamble to the rule finalizing 43 CFR § 3101.1-2, the BLM unequivocally stated that this regulation "will not be used to increase the level of protection of resource values that are addressed in lease stipulations." 53 Fed. Reg. 17,340, 17,341-42 (May 16, 1988). The BLM further explained that "the intent of the proposed rulemaking" was not to impose measures that, for example, "might result in an unstipulated additional buffer around an area already stipulated to have a buffer." *Id.* (emphasis added). Any attempt by the BLM to impose measures that expand express stipulations attached to leases are inconsistent with the leases' contractual terms.

**Issue Number:** PP-WY-BIGHORN-GRSG-15-12-35

**Organization:** Petroleum Association of Wyoming / Western Energy Alliance

**Protestor:** Esther Wagner

**Issue Excerpt Text:** The BLM has not adequately explained or justified the proposal to designate all PHMA avoidance areas. The Trades commented on the excessive ROW exclusion and avoidance area in its comments (Trade Comments, pg. 33). A lessee's ability to develop its leases could be significantly impacted if the BLM inappropriately limits access to such leases. The BLM must be willing to work with oil and gas lessees and operators to design access routes to proposed oil and gas development projects. If reasonable access is denied, operators cannot develop their leases and significant resources will be lost, in turn, hurting the local economy and federal treasury. While the issuance of the oil and gas leases does not guarantee access to the leasehold, a federal lessee is entitled to use such part of the surface as may be necessary to produce the leased substance. 43 C.F.R. § 3101.1-2 (2012).

**Issue Number:** PP-WY-BIGHORN-GRSG-15-12-36

**Organization:** Petroleum Association of Wyoming / Western Energy Alliance  
**Protestor:** Esther Wagner

**Issue Excerpt Text:** It would be inappropriate for the BLM to preclude all production operations in crucial winter range areas. Such a decision would essentially preclude year-round production operations and would lead to a significant decrease in domestic energy production. Moreover, many species such as pronghorn and mule deer have been found to habituate to increased traffic so long as the movement remains predictable. See Reeve, A.F. 1984. Environmental Influences on Male Pronghorn Home Range and Pronghorn Behavior. PhD. Dissertation; Irby, L.R. et al., 1984; "Management of Mule Deer in Relation to Oil and Gas Development in Montana's Overthrust Belt" Proceedings III:

Issues and Technology in the Management of Impacted Wildlife. To the extent the BLM intends to apply the new restriction on existing leases, BLM could be violating existing leases or taking private property without just compensation. The BLM must ensure that existing lease rights will be maintained and that production operations are allowed to continue throughout the year.

**Issue Number:** PP-WY-BIGHORN-GRSG-15-12-5

**Organization:** Petroleum Association of Wyoming / Western Energy Alliance  
**Protestor:** Esther Wagner

**Issue Excerpt Text:** The Trades protest BLM's decisions to impose new restrictions on existing federal oil and gas leases.

**Issue Number:** PP-WY-BIGHORN-GRSG-15-12-6

**Organization:** Petroleum Association of Wyoming / Western Energy Alliance  
**Protestor:** Esther Wagner

**Issue Excerpt Text:** The Trades protest the BLM's imposition of new restrictions that are inconsistent with existing leases for two primary reasons. First, the BLM does not have the authority to impose new restrictions on valid existing leases under the FLPMA. Second, the BLM cannot unilaterally modify federal leases, which are valid existing contracts. Finally, the BLM cannot impose new restrictions on existing leases that render development uneconomic or impossible.

**Issue Number:** PP-WY-BIGHORN-GRSG-15-12-7

**Organization:** Petroleum Association of Wyoming / Western Energy Alliance  
**Protestor:** Esther Wagner

**Issue Excerpt Text:** The proposed addition of new restrictions to existing leases exceeds BLM's legal authority under FLPMA. BLM may not modify existing lease rights through its land use planning process because FLPMA expressly states that all BLM actions, including authorization of plans, are "subject to valid existing rights." 43 USC § 1701 note (h); see also 43 CFR § 1610.5-3(b) (BLM is required to recognize valid existing lease rights). Thus, pursuant to federal law, BLM cannot terminate, modify, or alter any valid or existing rights.

**Issue Number:** PP-WY-BIGHORN-GRSG-15-12-8

**Organization:** Petroleum Association of Wyoming / Western Energy Alliance  
**Protestor:** Esther Wagner

**Issue Excerpt Text:** The BLM's Land Use Planning Manual reinforces that RMPs must respect existing lease rights. "All decisions made in land use plans, and subsequent implementation decisions, will be subject to valid existing rights. This includes, but is not limited to, valid existing rights associated with oil and gas leases..." See BLM Manual 1601, Land Use Planning,

1601.06.G (Rel. 1-1666 11/22/00). The BLM must comply with the provisions of its planning manual and recognize existing rights.

**Issue Number:** PP-WY-BIGHORN-GRSG-15-12-9

**Organization:** Petroleum Association of Wyoming / Western Energy Alliance  
**Protestor:** Esther Wagner

**Issue Excerpt Text:** The BLM's Instruction Memorandum 92-67 reinforces the contractual rights conferred by an oil and gas lease. This Instruction Memorandum states that "[t]he lease contract conveys certain rights which must be honored through its term, regardless of the age of the lease, a change in surface management conditions, or the availability of new data or information. The contract was validly entered based upon the environmental standards and information current at the time of the lease issuance." Thus, judicial and administrative authorities recognize that a federal oil and gas lease constitutes a contract between the federal government and the lessee, which cannot be unilaterally altered or modified by the United States.

### **Summary:**

The Bighorn Basin PRMP/FEIS violates valid, existing rights by imposing disturbance cap restrictions, lek buffer distance requirements, timing stipulations, and requiring compensatory mitigation.

### **Response:**

The Bighorn Basin PRMP/FEIS is subject to valid existing rights (FLPMA, Section 701(h)). Indeed, the purpose and need for the plan revision is to "ensure that public lands are managed according to the principles of multiple use identified in FLPMA, while maintaining valid existing rights" (PRMP, p. ES-6).

Additionally in the following direction would be applied to the leasing of fluid minerals (p. 2-16): "Priority will be given to leasing and development of fluid mineral resources, including geothermal, outside of PHMA and GHMA. When analyzing leasing and authorizing development of fluid mineral resources, including geothermal, in PHMA and GHMA, and subject to applicable stipulations for the conservation of GRSG, priority will be given to

development in non-habitat areas first and then in the least suitable habitat for GRSG. The implementation of these priorities will be subject to valid existing rights...”

With respect to oil and gas leasing specifically, the BLM may restrict development of an existing oil and gas lease through Conditions of Approval (COA). When making a decision regarding discrete surface-disturbing activities (e.g. Application for Permit to Drill) following site-specific environmental review, the BLM has the authority to impose reasonable measures (e.g. COA) to minimize impacts on other resource values, including restricting the siting or timing of lease activities (43 CFR 3100; 43 CFR 3160; IBLA 2006-213, 2006-226; IBLA 2008-197, 2008-200). In its plans, the BLM may identify “general/typical conditions of approval and best management practices” that may be employed in the planning area (BLM Handbook H-1601-1, p. C-24). While the Bighorn Basin PRMP/FEIS provides management direction for conditions of approval on valid existing leases (see P. 2-16, MR:2.4) it does so only consistent with lessees’ valid existing rights.

The Bighorn Basin PRMP/FEIS does not violate valid, existing rights.

### *Multiple Use Mandate*

**Issue Number:** PP-WY-BIGHORN-GRSG-15-01-8

**Organization:** Wyoming Wilderness Association

**Protestor:** Kyle Wilson

**Issue Excerpt Text:** The BLM failed to comply with FLPMA and NEPA. The Bighorn Basin Field Office identified 476,349 acres (in 43 areas) of Lands with Wilderness Characteristics in the PRMP. The PRMP will manage 0 acres of Lands with Wilderness Characteristics to protect wilderness character. The preferred alternative in the DRMP would have managed 52,485 acres to protect wilderness character. In order to comply with FLMPA’s multiple use and sustained yield mandate, the BLM should reinstate the previous decision to manage 52,485 acres to protect wilderness character. FLPMA requires the BLM to inventory its lands and their resource values, “including outdoor recreation and scenic values” 43 USC § 1711(a). FLPMA also requires the BLM to take these inventories into consideration during the preparation of land use plans.

During the preparation of land use plans, the BLM must also use and observe the FLPMA outlined principles of multiple use and sustained yield (43 USC § 1712(c)(4); 43 USC § 1712(c)(1)). FLPMA identifies wilderness character as a resource that must be inventoried as a part of multiple use management in land use planning. 43 USC § 1712(e). Moreover, it is critical to note that FLPMA requires the BLM to give consideration of the relative values of these resources but “not necessarily to the combination of uses that will give the greatest economic return” 43 USC § 1702(c). Thus, it is clear that under the guidance of FLMPA, the BLM has an obligation to administratively protect at minimum some wilderness characteristics in the land use planning in order to be in compliance with FLMPA.

**Issue Number:** PP-WY-BIGHORN-GRSG-15-04-19

**Organization:** Devon Energy Corporation

**Protestor:** Dru-Bower Moore

**Issue Excerpt Text:** Such excessive default buffer distances are also inconsistent with

the BLM's multiple-use mandate under FLPMA. Under FLPMA, the BLM is required to manage the public lands on the basis of multiple use and sustained yield. 43 USC § 1701(a)(7). " 'Multiple use management' is a deceptively simple term that describes the enormously complicated task of striking a balance among the many competing uses to which land can be put, 'including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and [uses serving] natural scenic, scientific and historical values.' " Norton v. Sothorn Utah Wilderness Alliance, 542 U.S. at 58 (quoting 43 USC § 1702(c)). Further, under FLPMA, mineral exploration and development is specifically defined as a principal or major use of the public lands (43 USC § 1702(l)). Under FLPMA, the BLM is required to foster and develop mineral development, not stifle and prohibit such development.

**Issue Number:** Issue Number: PP-WY-BIGHORN-GRSG-15-09-1

**Organization:** American Exploration & Mining Association

**Protestor:** Laura Skaer

**Issue Excerpt Text:** FLPMA commands the BLM to manage public lands for multiple uses and to consider a wide range of resource values, including the need to protect wildlife and quality of habitat, in the context of the Nation's needs for minerals, energy, food, fiber, and other natural resources. Section 102(a)(8) requires the BLM to manage the public lands in a "manner that will protect the quality of scientific, scenic historical, ecological, environmental...values" (USC 1701(a)(8)). The widespread travel and transportation restrictions (see PRMPA/FEIS at 2-75) under the Proposed Action are not in compliance with the specific directive pertaining to minerals in FLPMA Section 102(a)(12) that: the public lands [shall] be

managed in a manner that recognizes the Nation's need for domestic sources of minerals, food, timber, and fiber from the public lands including the implementation of the Mining and Minerals Policy Act of 1970 [at] 30 USC 21a (43 USC 1701(a)(12)).

**Issue Number:** Issue Number: PP-WY-BIGHORN-GRSG-15-10-10

**Organization:** Beatty and Wozniak for Exxon/Mobil and XTO Energy

**Protestor:** Bret Sumner

**Issue Excerpt Text:** In contrast, here, the Bighorn plan could be interpreted as imposing a "no significant impact" standard for oil and gas operations. This de facto insignificance standard violates the BLM's statutory mandate under FLPMA to manage public lands for multiple use and its recognition of oil and gas resources as a "major use" of public lands. It also is contrary to the basic tenets of NEPA and long established legal precedent.

**Issue Number:** Issue Number: PP-WY-BIGHORN-GRSG-15-12-33

**Organization:** Beatty and Wozniak for Exxon/Mobil and XTO Energy

**Protestor:** Bret Sumner

**Issue Excerpt Text:** Such excessive default buffer distances are also inconsistent with the BLM's multiple-use mandate under FLPMA. Under FLPMA, the BLM is required to manage the public lands on the basis of multiple use and sustained yield. 43 USC § 1701(a)(7). " 'Multiple use management' is a deceptively simple term that describes the enormously complicated task of striking a balance among the many competing uses to which land can be put, 'including, but not limited to: recreation, range, timber, minerals, watershed, wildlife and fish, and [uses serving] natural scenic, scientific and historical values.' " Norton v.



Sothorn Utah Wilderness Alliance, 542 US at 58 (quoting 43 USC § 1702(c)). Further, under FLPMA, mineral exploration and development is specifically defined as a principal or major use of the public lands (43 USC § 1702(l)). Under FLPMA, the BLM is required to foster and develop mineral development, not stifle and prohibit such development.

**Issue Number:** Issue Number: PP-WY-BIGHORN-GRSG-15-16-4

**Organization:** American Wild Horse Preservation

**Protestor:** Deniz Bolbol

**Issue Excerpt Text:** The BLM has an obligation under multiple use and the Wild Free-Roaming Horses and Burros Act, to provide wild horses and burros with equitable use of public lands. To date, the BLM has disproportionately allocated the majority of Animal Unit Months (AUMs) to private commercial livestock grazing and permitted a far smaller number for wild horses to live in these same areas. By reducing permitted livestock grazing in allotments which overlap with HMAs and HAs, the BLM then must equitably allocate AUMs to wild horses in these areas.

**Issue Number:** PP-WY-BIGHORN-15-24-3

**Organization:** The Wilderness Society

**Protestor:** Nada Culver

**Issue Excerpt Text:** The Bighorn Basin Proposed plan fails to balance conservation with development across the planning area. While we appreciate that the BLM would ascribe a variety of administrative designations and other conservation management to some lands and resources in the planning area, the Proposed plan would still close less than 10% of lands to oil and gas development and close less than 2% to motorized use (while still only limiting

motorized use to designated routes on approximately one-third of the planning area). PRMP at pp. 2-54,2-57. This does not represent balanced management for the multiple uses of our public lands, which include wilderness, wildlife values and primitive recreation experiences.

**Issue Number:** Issue Number: PP-WY-BIGHORN-GRSG-15-23-3

**Organization:** WYO-BEN

**Protestor:** Rick Magstadt

**Issue Excerpt Text:** FLPMA's multiple use directives are contravened by the Bighorn Basin plan. Under FLPMA, the BLM is required to manage the public lands on the basis of multiple use and sustained yield ("MUSY"). 43 USC § 1701(a)(7). "Multiple Use Management is a concept that describes the complicated task of achieving a balance among the many competing uses on public lands, 'including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and [uses serving] natural scenic, scientific and historical values'." Norton v. Southern Utah Wilderness Alliance, 542 US 55, 58 (2004) (quoting 43 USC § 1702(c)). Congress directed the Secretary of the Interior through FLPMA to consider a broad range of resource issues, land characteristics, and public needs and values in determining how public lands should be managed. FLPMA commands the BLM to manage public lands for multiple uses and to consider a wide range of resource values, including the need to protect wildlife and quality of habitat, in the context of the Nation's needs for minerals, energy, food, fiber, and other natural resources. Section 102(a)(8) requires the BLM to manage the public lands in a "manner that will protect the quality of scientific, scenic historical, ecological, environmental...values" (43 USC 1701 (a)(8)). In the present case, the BLM

must explain why their chosen management plan focuses on certain uses at the expense or exclusion of other uses, resulting in

significantly adverse socioeconomic impacts throughout the Big Horn Basin.

**Summary:**

The Bighorn Basin PRMP/FEIS violates the multiple use provisions of FLPMA by:

- Failing to manage any lands identified as LWC to protect their wilderness characteristics;
- Requiring excessive buffer distances that will affect mineral exploration and development, which is defined by FLPMA as a principal or major use of the public lands;
- Restricting travel and transportation, which will affect mineral exploration and development;
- Imposing a “no significant impact” standard for oil and gas operations;
- Failing to equitably allocate forage between domestic livestock and wild horses.

**Response:**

Section 302 of FLPMA provides that the Secretary shall manage the public lands under principles of multiple use and sustained yield. Section 103(c) of FLPMA defines “multiple use” as the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people and a combination of balanced and diverse resource uses that takes into account the long term needs of future generations for renewable and non-renewable resources, including, among many other things, wildlife and fish and natural scenic, scientific, and historical values.

FLPMA’s multiple use mandate does not require that all uses be allowed on all areas of the public lands. Through the land use planning process, the BLM evaluates and chooses an appropriate balance of resource uses which involves tradeoffs between competing uses. Rather, the BLM has wide latitude to allocate the public lands to particular uses, including conservation values, and to employ the mechanism of land use allocation to protect for certain resource values, or, conversely, develop some resource values to the detriment of others, short of unnecessary or undue degradation. Similarly, the TGA does not require the BLM to allow grazing or particular levels of grazing on all public lands and provides wide discretion to protect other resource values.

All alternatives considered in the Bighorn Basin PRMP/FEIS, as described in Chapter 2 (Vol. 1, p. 2-1 through 2-374), provide an appropriate balance of uses on the public lands. All alternatives allow some of level of all uses present in the planning area, in a manner that is consistent with applicable statutes, regulations, and BLM policy.

The Bighorn Basin PRMP/FEIS satisfies FLPMA’s multiple use mandate.

### *Consistency with State and Local Plans*

**Issue Number:** PP-WY-BIGHORN-GRSG-15-03-1

**Organization:** Local Government Cooperating Agencies

**Protestor:** Various

**Issue Excerpt Text:** The BLM has not adequately considered the counties' land use plans or acknowledged the inconsistencies in the PRMP/FEIS. 43 USC § 1712 (c) (9) provides that the Secretary of Interior assure that the BLM's land use plan be "consistent with State and local plans" to the maximum extent possible under federal law and the purposes of the Federal Land Policy Management Act of 1976 (FLPMA).

**Issue Number:** PP-WY-BIGHORN-GRSG-15-03-2

**Organization:** Local Government Cooperating Agencies

**Protestor:** Various

**Issue Excerpt Text:** LGCA members believe that the BLM has insufficiently used and acknowledged in the PRMP/FEIS numerous stated policies and goals included in the Big Horn, Hot Springs, Park, and Washakie County Land Use Plans and Meeteetse, Cody, Hot Springs, Powell-Clarks Fork, Shoshone, South Big Horn, and Washakie County Conservation District Land Use Plans. In not addressing inconsistencies between the PRMP/FEIS and County and Conservation District Land Use Plans, the BLM is in violation of CEQ Section 1506.2 – Elimination of Duplication with State and Local Procedures and 43 USC § 1712 (c) (9) of FLPMA. The LGCA has consistently stated that they favored continued multiple use and are not in favor of reducing access to public lands for a variety of purposes.

**Issue Number:** PP-WY-BIGHORN-GRSG-15-04-14

**Organization:** Devon Energy Corporation

**Protestor:** Dru-Bower Moore

**Issue Excerpt Text:** The Proposed Bighorn RMP is inconsistent with the State of Wyoming GRSG Core Area Strategy, in violation of FLPMA. Devon protests the significant inconsistencies between the Proposed Bighorn RMP and the Wyoming GRSG Core Area Strategy. These inconsistencies are the result of the BLM's choice to impose certain GRSG conservation measures in violation of FLPMA's requirement for the BLM to coordinate land use planning with state and local governments. The Proposed Bighorn RMP diverges from the Wyoming GRSG Core Area Strategy in many important respects:

- Timing restrictions that are not consistent with those contained in Wyoming Executive Order 2011-5. Proposed Bighorn RMP, Appd. G, pgs. G-18 – G-20.
- Noise limitations that are not consistent with those contained in the Wyoming Executive Order 2011-5. Proposed Bighorn RMP, Record No. 4121, pgs. 2-157 – 2-158.
- The identification of winter concentration areas that have not been reviewed and approved by the GRSG Implementation Team and the Governor. Proposed Bighorn RMP, Record No. 4119, pg. 2-155, Map 42.

The BLM's failure to identify and reconcile these inconsistencies violates FLPMA's requirement for the BLM to ensure that federal land use plans are, "to the maximum extent" consistent with federal law, consistent with state and local land use programs. 43 USC §1712(c)(9).

**Issue Number:** PP-WY-BIGHORN-GRSG-15-04-17

**Organization:** Devon Energy Corporation

**Protestor:** Dru-Bower Moore

**Issue Excerpt Text:** Second, they are inconsistent with the guidance and direction from the Wyoming Executive Order that indicates that all proposed winter concentration areas must be presented to the GRSG Implementation Team (SGIT) and then presented to the Governor for approval through a modification to the Wyoming Executive Order. It is inappropriate for a single BLM field office to identify winter concentration areas without the review and consent of the Wyoming Game and Fish Department, the SGIT, and the Governor of Wyoming.

**Issue Number:** PP-WY-BIGHORN-GRSG-15-05-1

**Organization:** Marathon Oil Company

**Protestor:** Mike Henderson

**Issue Excerpt Text:** The Decision Record is not consistent with EO 2011-15 “Existing Use Language:, Items 2, 4, 9, and 14 of the EO and Item II of Attachment B.

**Issue Number:** PP-WY-BIGHORN-GRSG-15-05-2

**Organization:** Marathon Oil Company

**Protestor:** Mike Henderson

**Issue Excerpt Text:** The Decision Record is not consistent with EO 2011-15 Item 7 of Attachment B, which provides for a 4-mile TLS buffer around an occupied lek.

**Issue Number:** PP-WY-BIGHORN-GRSG-15-05-3

**Organization:** Marathon Oil Company

**Protestor:** Mike Henderson

**Issue Excerpt Text:** The Decision Record is not consistent with EO 2011-15. Item 6 of the EO 2011-15 allows a 10 dBA noise level increase above ambient noise (existing activity included)

**Issue Number:** PP-WY-BIGHORN-GRSG-15-11-4

**Organization:** Wyoming Outdoor Council

**Protestor:** Dan Heilig

**Issue Excerpt Text:** Management actions outlined in the proposed Bighorn Basin Plan related to Winter Concentration Areas are inconsistent with and less protective than the Wyoming Governor's Executive Order (EO).

**Issue Number:** PP-WY-BIGHORN-GRSG-15-12-1

**Organization:** Petroleum Association of Wyoming / Western Energy Alliance

**Protestor:** Esther Wagner

**Issue Excerpt Text:** The Trades protest several inconsistencies between the Proposed RMP and the Wyoming GRSG Core Area Strategy. These inconsistencies appear to be the result of BLM’s choice to impose certain GRSG conservation measures in violation of the FLPMA’s requirement for BLM to coordinate land use planning with state and local governments. The Proposed RMP diverges from the Wyoming GRSG Core Area Strategy in many important respects, as follows:

- Timing restrictions that are not consistent with those contained in Wyoming Executive Order 2011-5. Proposed RMP, Appd. G, pgs. G-18 – G-20.
- Noise limitations that are not consistent with those contained in Wyoming Executive Order 2011-5. Proposed RMP, Record No. 4121, pgs. 2-157 – 2-158.
- The identification of winter concentration areas that have not been reviewed and approved by the GRSG Implementation

Team and the Governor of Wyoming.  
Proposed RMP, Record No. 4119, pg. 2-155, Map 42.

- The BLM's requirement to impose compensatory mitigation. Proposed RMP, Appd. Y, pg. Y-15.
- The BLM's requirement for net conservation gain. Proposed RMP, Appd. Y.

**Issue Number:** PP-WY-BIGHORN-GRSG-15-12-4

**Organization:** Petroleum Association of Wyoming / Western Energy Alliance

**Protestor:** Esther Wagner

**Issue Excerpt Text:** Second, they are inconsistent with the guidance and direction from the Wyoming Executive Order that indicates that all proposed winter concentration areas must be presented to the SGIT and then presented to the Governor for approval through a modification to the Wyoming Executive Order. It is inappropriate for a single BLM field office to identify winter concentration areas without the review and consent of the Wyoming Game and Fish Department, the SGIT, and the Governor of Wyoming.

### **Summary:**

The Bighorn Basin PRMP/FEIS is inconsistent with several state and county plans and orders, including the Wyoming GRSG Core Area Strategy and Wyoming Executive Order 2011-5. Additionally, the BLM has inadequately considered the counties' land use plans or acknowledged the inconsistencies in the Bighorn Basin PRMP/FEIS, in violation of CFR Section 1506.2, "Elimination of Duplication with State and Local Procedures" and 43 USC Section 1712 (c)(9) of FLPMA.

### **Response:**

40 CFR 1506.2 states: "to better integrate environmental impact statements into state or local planning processes, statements shall discuss any inconsistency of a proposed action with any approved state or local plan and laws (whether or not federally sanctioned). Where an inconsistency exists, the statement should describe the extent to which the agency would reconcile its proposed action with the plan or law."

Section 202 (c)(9) of FLPMA (43 USC 1712 (c) (9)) requires that "land use plans of the Secretary under this section shall be consistent with state and local plans to the maximum extent found consistent with Federal law and the purposes of this Act." However, BLM land use plans may be inconsistent with state, local, and Tribal plans where it is necessary to meet the purposes, policies, and programs associated with implementing FLPMA and other Federal laws and regulations applicable to public lands (43 CFR 1610.3-2(a)).

In accordance with these requirements, the BLM has given consideration to state, local and Tribal plans that are germane to the development of the Bighorn Basin PRMP/FEIS, including the Wyoming GRSG Core Area Strategy, Wyoming Executive Order 2011-5, and county plans. The BLM has worked closely with state, local, and Tribal governments during preparation of the Bighorn Basin PRMP/FEIS. Chapter 5, Section 5.2 describes coordination that has occurred throughout the development of the Bighorn Basin PRMP/FEIS.

A list of the local, state, and Tribal plans that the BLM considered can be found in Chapter 1, Section 1.4.4. The BLM conducted an internal review process to identify any inconsistencies

with local, state, and Tribal plans. Table 4-36 is an example in the Bighorn Basin PRMP/FEIS where an inconsistency was identified. The agency will discuss why any remaining inconsistencies between the Bighorn Basin PRMP/FEIS and relevant local, state, and Tribal plans cannot be resolved in the Record of Decision (ROD). Additionally, all BLM land use plans or plan amendments and revisions must undergo a 60-day Governor's consistency review prior to final approval. BLM's procedures for the Governor's consistency review are found in the planning regulations in 43 CFR 1610.3-2(e).

### *Range of Alternatives*

**Issue Number:** PP-WY-BIGHORN-GRSG-15-11-2

**Organization:** Wyoming Outdoor Council

**Protestor:** Dan Heilig

**Issue Excerpt Text:** For all three MLPs across the Proposed RMP, the BLM has failed to incorporate guidance from the Handbook on Planning for Fluid Mineral Resources and the updated Chapter V "Master Leasing Plans". Most importantly, it has fallen short of the requirement that "the planning document should include alternative ways of implementing the MLP. One way to accomplish this is to develop MLP-specific sub-alternatives within the MLP alternative or alternatives of the overall RMP" (H-1624-1, V-8). In the Proposed RMP, there is no variation in the design of MLPs across alternatives and no sub-alternatives for the MLPs. There are only two alternatives-to implement or not.

**Issue Number:** PP-WY-BIGHORN-GRSG-15-11-3

**Organization:** Wyoming Outdoor Council

**Protestor:** Dan Heilig

**Issue Excerpt Text:** The BLM has failed to consider a range of alternatives that includes maintaining wilderness or other wildland qualities in Wilderness Study Areas (WSAs) that are "released" by Congress. It has not considered alternatives in the PRMP/FEIS that would allow for various management

options in these released areas. In fact, the BLM considered no alternatives at all. The alternatives have been limited to considering only one option: reversion of "released" WSAs back to general land use management.

**Issue Number:** PP-WY-BIGHORN-GRSG-15-12-15

**Organization:** Petroleum Association of Wyoming / Western Energy Alliance

**Protestor:** Esther Wagner

**Issue Excerpt Text:** The Final EIS fails to analyze a reasonable range of alternatives to the Proposed RMP. First, the Final EIS does not analyze an alternative to the Proposed RMP's mitigation standard of a "net conservation gain" for the GRSG. Second, the Final EIS does not analyze any alternative to the Proposed RMP's monitoring framework, including alternatives that BLM has the resources to implement.

**Issue Number:** PP-WY-BIGHORN-GRSG-15-14-7

**Organization:** Western Watersheds Project

**Protestor:** Travis Bruner

**Issue Excerpt Text:** The need for seasonal restrictions has been affirmed by leading GRSG scientists and the courts. Dr. Clair Braun identified the need for the seasonal restrictions in 2006: "Grazing should not be allowed until after June 20 and all livestock should be removed by August 1 with a goal of leaving at least 70% of the herbaceous production each year to form residual cover

to benefit GRSG nesting the following spring.” The courts have also established that “to avoid conflicts with sage grouse nesting and late brood-rearing habitat grazing should be limited to mid-summer (June 20 to August 1), and to minimize impacts on herbaceous vegetation prior to the next nesting seasons it should be limited to late fall and winter months (November 15 to March 1).” WWP v. Salazar, 843 F.Supp.2d 1105, 1123 (D. Idaho 2012). The absence of the analysis of any such restrictions under any of the alternatives and under the proposed plan is a serious deficiency, but even more so, the failure to restrict grazing in accordance with these guidelines is a failure to conserve, protect, and enhance sage-grouse habitats.

**Issue Number:** PP-WY-BIGHORN-GRSG-15-16-3

**Organization:** American Wild Horse Preservation

**Protestor:** Deniz Bolbol

**Issue Excerpt Text:** The PRMP fails to take a hard look at alternative actions that would allow the agency to fulfill its mandate to “protect” wild horses and to reduce the inequitable allocation of AUMs to livestock in order to provide equitable resource use for wild horses.

**Issue Number:** PP-WY-BIGHORN-GRSG-15-16-6

**Organization:** American Wild Horse Preservation

**Protestor:** Deniz Bolbol

**Issue Excerpt Text:** The RMP fails to take a hard look at the facts as listed above including the proximity to large tourism locations in the vicinity, the BLM opportunity to promote this HMA to those national and international tourists, the high number of tourists that already visit the McCullough Peaks HMA and the ease for tourist to locate wild horses in this HMA for viewing purposes.

### **Summary:**

The Bighorn Basin PRMP/FEIS failed to analyze an adequate range of alternatives as required by NEPA by not considering alternates relating to:

- implementing master leasing plans;
- managing WSAs released by Congress;
- a net conservation gain goal for protecting GRSG habitat;
- the monitoring framework;
- seasonal restrictions on livestock grazing; and
- managing wild horses and burros, including opportunities to promote the McCoulogh Peaks HMA for viewing of wildhorses.

### **Response:**

#### General

When preparing an EIS, NEPA requires an agency to rigorously explore and objectively evaluate reasonable alternatives, and for alternatives which were eliminated from detailed study, to briefly discuss the reasons for their having been eliminated (40 CFR 1502.14(a)) (Bighorn Basin PRMP/FEIS, Section 2.4 Alternatives Considered But Not Carried Forward for Detailed Analysis). When there are potentially a very large number of alternatives, the BLM may only

analyze a reasonable number to cover the full spectrum of alternatives (BLM Handbook H-1790-1, Section 6.6.1 quoting Question 1b, CEQ, Forty Most Asked Questions Concerning CEQ's NEPA Regulations, March 23, 1981).

The BLM developed a range of reasonable alternatives that meet the purpose and need (Bighorn Basin PRMP/FEIS, Section 1.2 Purpose and Need for the Resource Management Plan) and that address resource issues identified during the scoping period. The Bighorn Basin PRMP/FEIS analyzed six distinct alternatives in detail, which are described in Section 2.7: Detailed Descriptions of Alternatives by Resource. The alternatives cover the full spectrum by varying in: (1) degrees of protection for each resource and use; (2) approaches to management for each resource and use; (3) mixes of allowable, conditional, and prohibited uses in various geographic areas; and (4) levels and methods for restoration.

#### Master Leasing Plans

In general, RMPs identify oil and gas planning decisions, such as areas open or closed to leasing or open to leasing with major or moderate constraints (lease stipulations) based on known resource values and reasonably foreseeable oil and gas development scenarios. In some areas, additional planning and analysis may be necessary prior to new oil and gas leasing because of changing circumstances, updated policies, and new information. The Master Leasing Plan (MLP) is a mechanism for completing additional planning, analysis, and decision making that may be necessary for areas currently leased, have a major federal mineral interest, industry has expressed an interest in leasing, and there is moderate or high potential for oil and gas (Instruction Memorandum No. 2010-117).

The Bighorn Basin PRMP/FEIS alternative matrix (p. 2-104 and 2-105) identifies varying acreages of BLM-administered federal mineral estate across the alternatives that are open or closed to oil and gas leasing. In addition the alternative matrix discloses BLM-administered public lands where MLPs are and are not to be applied consistent with the management of other resources and resources uses (Bighorn Basin PRMP/FEIS, p. 2-109 through 2-121). The Master Leasing Plan (MLP) is a mechanism for completing the additional planning, analysis, and decision making that may be necessary for areas meeting the four criteria after an RMP planning process is completed.

#### Congressionally Released WSAs

Alternatives developed to be analyzed in the Bighorn PRMP/FEIS resulted from issues identified through the public scoping process and are described in the Emerging Issues and Changing Circumstances section (p. 1-5 and 1-6). None of the issues address alternate management for congressionally released WSAs. The detailed alternative matrix at page 2-361 (Record # 7334 ) provides direction concerning the release of WSAs by Congress. This management direction is consistent with Appendix C, Section B. Administrative Designations (p. 27) , of the BLM's Land Use Planning Handbook (H-1601-1).

#### Net Conservation Gain - Monitoring Framework

Net Conservation Gain is described in the Bighorn Basin PRMP/FEIS glossary (p. Glossary-24) as "The actual benefit or gain above baseline conditions." and is addressed in the detailed alternative matrix, records #6061 and #6017. The Net Conservation Gain strategy responds to the



landscape-scale goal to enhance, conserve, and restore GRSG and its habitat. The action alternatives provide management direction to meet this landscape-scale goal (Detailed Alternative Matrix, p. 2-25 and 2-26). In addition, the net conservation gain is derived from the purpose and need which calls for the agencies to incorporate measures to “conserve, enhance and/or restore GRSG habitat”; and accounts for uncertainty associated with the effectiveness of mitigation.

The Monitoring Framework described in Appendix Y for GRSG habitat management describes a methodology to ensure consistent assessments about GRSG habitats are made across the species range. This framework describes the methodology—at multiple scales—for monitoring of implementation and disturbance and for evaluating the effectiveness of actions to conserve the species and its habitat (Appendix YE). Being a methodology for monitoring implementation of the Bighorn Basin PRMP/FEIS does not require it to be varied between the action alternatives.

#### Livestock Seasonal Restrictions

As identified in Section 2.8 of the Draft RMP/Draft EIS (p. 2-79), each alternative (A through D) describes a different management approach for GRSG habitat which will conserve, protect, and enhance GRSG habitat to varying degrees. Approaches as to how this is accomplished depends upon the nature of each particular alternative. Alternative B emphasizes conservation of physical, biological, heritage and visual resources, and conserves large areas of land for physical, biological, and heritage resources. Alternative C emphasizes resource uses and reduces constraints on resource uses to protect physical, biological, and heritage and visual resources, conserving the least land area for physical, biological, and heritage resources. Alternative D increases conservation of physical, biological, and heritage and visual resources while emphasizing moderate constraints on resource uses and reclamation and mitigation requirements to reduce impacts to resource values.

#### McCullough Peaks HMA

Alternatives developed to be analyzed in the Bighorn Basin PRMP/FEIS resulted from issues identified through the public scoping process and are described in the Emerging Issues and Changing Circumstances section (pgs 1-5 and 1-6). None of the identified issues address promoting this HMA to tourists for viewing purposes. The detailed alternative matrix (p. 2-166 through 2-168) provides management direction for this HMA. This management direction is consistent with Appendix C, Section F. Wild Horses and Burros (p. 7), of the BLM’s Land Use Planning Handbook (H-1601-1).

#### Conclusion:

The BLM considered a reasonable range of alternatives in the Bighorn Basin PRMP/FEIS in full compliance with NEPA.

#### *Purpose and Need*

**Issue Number:** PP-WY-BIGHORN-GRSG-15-08-1

**Organization:** WildEarth Guardians

**Protestor:** Erik Molvar

**Issue Excerpt Text:** As described below, many aspects of the proposed RMP do not conform to the best available science or the recommendations of the BLM’s own experts regarding necessary measures to protect

sage grouse habitats and prevent population declines, and therefore do not meet the Purpose and Need to “conserve, enhance, and/or restore GRSG Habitat.”

**Issue Number:** PP-WY-BIGHORN-GRSG-15-23-1

**Organization:** WYO-BEN

**Protestor:** Rick Magstadt

**Issue Excerpt Text:** The BLM's proposed overhaul of its LUP is purportedly in response to the 2010 decision by the Fish and Wildlife Service that the listing of the GRSG was “warranted but precluded” (WBP) under 16 USC § 1533(b)(3)(B)(iii), see generally Endangered and Threatened

Wildlife and Plants; 12-Month Findings for the Petitions to List the GRSG (*Centrocercus urophasianus*) as Threatened or Endangered; Proposed Rule, 75 Fed. Reg. 13,910 (March 23, 2010). The LUP Amendment initiative by the BLM which is subject to analysis under the National Environmental Policy Act (NEPA), 42 USC §§ 4321–4370h, is, as far as can be ascertained, unprecedented in its scope. Moreover, the Bighorn Basin RMP was significantly-amended and has significantly exceeded its original GRSG purposes, with restrictions in areas that have nothing to do with sensitive species management.

### **Summary:**

The purpose and need to conserve, enhance, and/or restore GRSG habitats for the Bighorn Basin PRMP/FEIS has not been met because the best available science has not been used to develop the management actions.

### **Response:**

CEQ regulations direct that an EIS “...shall briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action” (40 CFR 1502.13). Also, under the CEQ regulations, the BLM and the Forest Service are required to “study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources as provided by section 102(2)(E) of the Act [NEPA].” (40 CFR 1501.2(c)). The range of alternatives developed are intended to meet the purpose and need and address the issue; thereby, providing a basis for eventual selection of an alternative in a decision (BLM NEPA handbook and Forest Service Handbook 1909.15 – National Environmental Policy Act Handbook Chapter 10 – Environmental Analysis).

Item 33 under Section 1.4.2 (Planning Criteria) states “The BLM will utilize the COT Report (USFWS 2013a), the WAFWA Conservation Assessment of GRSG and Sagebrush Habitats (Connelly et al. 2004), and any other appropriate resources, to identify GRSG habitat requirements and best management practices.” The management action developed and analyzed in the alternatives for Bighorn Basin PRMP/FEIS included actions as recommended in the COT and NTT reports. The management actions proposed are within the range of alternatives that respond to the purpose and need.

The BLM applied the best information available when it developed the Proposed Alternative and other alternatives as they include recommendations from the NTT and COT reports. Therefore

these management actions do meet the purpose and need and are within the range of alternatives that addresses such.

### *Response to Public Comments*

**Issue Number:** PP-WY-BIGHORN-GRSG-15-02-1

**Organization:** Rocky Mountain Power (PacifiCorp)

**Protestor:** R. Jeff Richards

**Issue Excerpt Text:** Rocky Mountain Power submits the following protest on the Wyoming Bighorn Basin LUPA FEIS as it adversely affects our ability to serve our customers and did not adequately address comments that were submitted previously on the DEIS/LUPA on October 30, 2013. Additionally, the establishment of SFAs was not included in the DEIS which did not allow the public an opportunity to comment as required by NEPA.

**Issue Number:** PP-WY-BIGHORN-GRSG-15-07-3

**Organization:** Individual Consumer

**Protestor:** Richard Kroger

**Issue Excerpt Text:** I am also protesting because the LUPA/EIS did not address my comments that pointed out that the BLM did not address the fact that it does not establish range monitoring sites within 1h-mile of livestock watering sites, because these 500-acre areas are being degraded by the concentrated livestock use. I pointed out that there are probably at least 2,000 natural and man-made livestock watering sites which means at least 1,000,000 acres are considered to be overgrazed. This constitutes nearly 30% of the 3.2-million acres of BLM lands in the Bighorn Basin of Wyoming. The BLM cannot ignore this fact because its own data support this calculation.

**Issue Number:** PP-WY-BIGHORN-GRSG-15-07-4

**Organization:** Individual Consumer

**Protestor:** Richard Kroger

**Issue Excerpt Text:** I am also protesting because the Wyoming BLM ignored all my comments about the need to mention livestock grazing when discussing permitted surface disturbing activities on our Public Lands. A specific example of BLM's refusal to accept the fact that past and even current grazing practices constitutes more surface disturbance that caused by all of man's other activities combined occurs on page 3-33. The conversion of the historic broad grass-covered swales to current incised gullies was historically caused by the only man-caused surface disturbing activity of the time: extreme, continuous overgrazing by the exotic introduced European cows. It is important for BLM to publicly recognize that mismanaged past livestock grazing has caused more ecological damage to our Public Lands (and GRSG habitat) than all of man's other past and current impacts. On page 98, the BLM recognizes that past grazing practices are still preventing the agency from achieving PFC.

**Issue Number:** PP-WY-BIGHORN-GRSG-15-12-16

**Organization:** Petroleum Association of Wyoming / Western Energy Alliance

**Protestor:** Esther Wagner

**Issue Excerpt Text:** With respect to the Proposed RMP, the Trades submitted extensive and detailed comments on the Required Design Features listed in Appendix L. See Trade Comments on

Supplement Draft, pgs. 29 - 32. BLM, however, did not make any substantive changes to the Required Design Features between draft and final, Compare Proposed RMP, Appd. L with Supplement Draft RMP, Appd. L. Additionally, the BLM did not acknowledge the Trades' comments on the Required Design Features in Appendix L and did not "[e]xplain[ing] why the

comments do not warrant further response." See 40 CFR § 1503.4(a). The BLM's only response to comments regarding the Required Design Features was a notation that Required Design Features "could not be revised." Proposed RMP, Appd. A, pg. A-77. BLM has not provided the response to comments to the extent required by the CEQ regulation.

### **Summary:**

The BLM did not adequately address comments that were received on the Bighorn Basin Draft RMP/Draft EIS. The BLM introduced SFAs that were not included in the DEIS and did not allow the public the opportunity to comment on SFAs. The BLM ignored comments regarding the need to consider livestock grazing as a permitted surface disturbing activity and did not respond to comments or make substantive changes to the Required Design Features between the Draft and Final stages of the EIS.

### **Response:**

The CEQ regulations at 40 CFR 1503.4 recognize several options for responding to comments, including 40 CFR 1503.4 – Response to Comments:

- (a) An agency preparing a final environmental impact statement shall assess and consider comments both individually and collectively, and shall respond by one or more of the means listed below, stating its response in the final statement. Possible responses are to:
  - (1) Modify alternatives including the proposed action.
  - (2) Develop and evaluate alternatives not previously given serious consideration by the agency.
  - (3) Supplement, improve, or modify its analyses.
  - (4) Make factual corrections.
  - (5) Explain why the comments do not warrant further agency response, citing the sources, authorities, or reasons which support the agency's position and, if appropriate, indicate those circumstances which would trigger agency reappraisal or further response.
- (b) All substantive comments received on the draft statement (or summaries thereof where the response has been exceptionally voluminous), should be attached to the final statement whether or not the comment is thought to merit individual discussion by the agency in the text of the statement.
- (c) If changes in response to comments are minor and are confined to the responses described in paragraphs (a)(4) and (5) of this section, agencies may write them on errata sheets and attach them to the statement instead of rewriting the draft statement. In such cases only the comments, the responses, and the changes and not the final statement need be circulated (§1502.19). The entire document with a new cover sheet shall be filed as the final statement (§1506.9).

During the public comment periods, the BLM received thousands of written comments by mail, email, and submissions at the public meetings. Comments covered a wide spectrum of thoughts, opinions, ideas, and concerns. Upon receipt, the BLM reviewed the comments, grouped similar substantive comments under an appropriate topic heading, and evaluated and crafted summary responses addressing the comment topics. The response indicated whether or not the

commenters' points would result in new information or changes being included in the Bighorn Basin PRMP/FEIS. In many circumstances, public comments prompted such changes to the Draft and Supplemental RMP/EIS. Appendix A, Comment Analysis, provides a detailed description of the comment analysis methodology and an overview of the public comments received (Bighorn Basin PRMP/FEIS, ES-10).

In accordance with the BLM's NEPA Handbook (H-1790-1), comments received on the Bighorn Basin PRMP/FEIS were analyzed and responded to if they: "are substantive and relate to inadequacies or inaccuracies in the analysis or methodologies used; identify new impacts or recommend reasonable new alternatives or mitigation measures; or involve substantive disagreements on interpretations of significance." (See 40 Code of Federal Regulations [CFR] 1502.19, 1503.3, 1503.4, 1506.6, and 516 DM 4.17).

RMP/EIS as necessary to reflect the fact that the BLM does not consider livestock grazing or other herbivory to be a surface-disturbing activity (Appendix A at A-40). Comments and responses regarding required design features are found in Appendix A at A-71.

It is important for the public to understand that BLM's comment response process does not treat public comments as if they were a vote for a particular action. The comment response process ensures that every comment is considered at some point when preparing the Bighorn Basin PRMP/FEIS.

Conclusion: The BLM has provided adequate opportunity for comments, has considered all comments and responded adequately comments received for the Draft and Final EIS.

### *Supplemental EIS*

**Issue Number:** PP-WY-BIGHORN-GRSG-15-04-11

**Organization:** Devon Energy Corporation

**Protestor:** Dru-Bower Moore

**Issue Excerpt Text:** In the Proposed Bighorn RMP, the BLM proposed to create three new MLP areas totaling over 810,000 acres. Bighorn RMP, pgs. 2-109 – 2-121. The proposed MLP significantly restrict potential new oil and gas development with strict new surface occupancy restrictions, onerous new timing restrictions, and substantial limitations on the ability to secure future leases in this area. Bighorn RMP, pgs. 2-109 – 2-121. The BLM also proposed significant new limitations on production operations during winter periods and identifies new sage-grouse winter

concentration areas. The designation of over 810,000 acres of MLPs after they were expressly not included in the Bighorn Draft RMP constitutes a substantial change between the draft EIS and the Final EIS Bighorn Basin Planning Area. The proposed new limitations on winter use of even existing leases and the identification of new winter concentration areas are similarly substantial changes. Prior to issuing its ROD and final approved RMP, the BLM must provide a supplemental draft EIS with notice and an opportunity for comment in compliance with its NEPA and FLPMA obligations.

**Issue Number:** PP-WY-BIGHORN-GRSG-15-04-12

**Organization:** Devon Energy Corporation

**Protestor:** Dru-Bower Moore

**Issue Excerpt Text:** In the present situation, the addition of the new MLP areas does not constitute a minor variation to one of the alternatives in the Draft Bighorn RMP, nor is the imposition of the new MLPs within the spectrum of alternatives analyzed in the draft. None of the alternatives presented in the Draft Bighorn RMP included the MLP areas. See Proposed Bighorn RMP, Appdx. Y, Y-2. The new MLPs represent a wholesale shift in the management of over 150,000 acres of USFS lands. Similarly, the identification of the new winter concentration areas was not contemplated by the alternatives contained in the Draft RMP.

**Issue Number:** PP-WY-BIGHORN-GRSG-15-04-13

**Organization:** Devon Energy Corporation

**Protestor:** Dru-Bower Moore

**Issue Excerpt Text:** Further, the BLM's inclusion of the new MLPs, new production limitations, and winter concentration areas in the Proposed Bighorn RMP violates FLPMA because the public was not provided a meaningful opportunity to comment upon the new MLP areas. The BLM's planning regulations require the public to be provided an opportunity to meaningfully participate in and comment upon preparation of land use plans. 43 CFR § 1610.2. The BLM's planning handbook unequivocally requires the agency to issue a supplement to either the draft or final EIS when "substantial changes to the proposed action, or significant new information/circumstances collected during the comment period" are presented. BLM Land Use Planning Handbook H-1610-1, III.A.10, pg. 24 (Rel. 1-1693 03/11/05). Because the new MLPs are unquestionably a "substantial change" when compared to any of the alternatives included in the Draft

Bighorn RMP, the BLM should have prepared and released for comment a second supplement to the Draft Bighorn RMP.

**Issue Number:** PP-WY-BIGHORN-15-12-12

**Organization:** Petroleum Association of Wyoming / Western Energy Alliance

**Protestor:** Esther Wagner

**Issue Excerpt Text:** The Proposed RMP contains wholly new components. None of the alternatives presented in the Draft RMP included the requirements that mitigation produce a net conservation gain, the mitigation plan, and the monitoring plan. The BLM first presented the public with these components when it released the Proposed RMP. The BLM also identified three Master Leasing Plans (Absorka Front, Fifteenmile, Bighorn Front) that were not only not included in the draft or the supplemental draft EIS for the Bighorn Basin RMP, but were expressly rejected as unnecessary in the draft documents. Draft Bighorn RMP, Appd. Y, pg. Y-1. These proposed changes violate both NEPA and FLPMA because they were not included and were rejected in the Draft Bighorn RMP and because the BLM did not allow the public an opportunity to meaningfully comment on these provisions. Further, the BLM added new limitations on production operations and included the identification of sage-grouse winter concentration areas in the Worland Field Office for the first time in the Final EIS and Proposed RMP. Proposed Bighorn RMP, Record No. 4119, pg. 2- 155, Map 42 (GRSG winter concentration areas); Record No. 4079, pg. 2-144 (production)).

**Issue Number:** PP-WY-BIGHORN-15-12-13

**Organization:** Petroleum Association of Wyoming / Western Energy Alliance

**Protestor:** Esther Wagner

**Issue Excerpt Text:** Most troubling is the fact that the net conservation gain requirement, mitigation plan, and monitoring plan were not incorporated into the Proposed RMP and Final EIS in response to public comment on the Draft RMP/Draft EIS or in response to environmental impacts disclosed in the Draft EIS. See Forty Questions, 46 Fed. Reg. at 18,035 (explaining that agencies may adjust the alternatives analyzed in response to comments). Rather, the BLM appears to have incorporated the net conservation gain requirement, mitigation plan, and monitoring plan to respond to national policies by the BLM and the U.S. Fish and Wildlife Service that were released after the Draft RMP/Draft EIS was published and that were never formally offered for public comment. See U.S. Fish & Wildlife Serv., Greater Sage-Grouse Mitigation Framework (2014); BLM, The GRSG Monitoring Framework (2014). The public never had the opportunity to review and comment on these new components.

**Issue Number:** PP-WY-BIGHORN-15-12-14  
**Organization:** Petroleum Association of Wyoming / Western Energy Alliance  
**Protestor:** Esther Wagner

**Issue Excerpt Text:** The net conservation gain requirement was not presented in the Draft RMP. Although the Draft RMP acknowledged that the Proposed RMP/Final EIS would include more details about the monitoring and mitigation plans, see Draft Bighorn RMP Appd. C and D, these “placeholders” did not allow the public a meaningful opportunity to comment on the substance of the monitoring and mitigation plans. The inclusion of the net conservation gain requirement, mitigation plan, and monitoring plan constitutes “substantial changes from the previously proposed actions that are relevant to environmental

concerns” and should have been presented in a supplemental draft EIS for public comment.

**Issue Number:** PP-WY-BIGHORN-15-12-17  
**Organization:** Petroleum Association of Wyoming / Western Energy Alliance  
**Protestor:** Esther Wagner

**Issue Excerpt Text:** The BLM’s own planning handbook unequivocally directs the agency to issue a supplement to a draft EIS when “substantial changes to the proposed action, or significant new information and circumstances collected during the comment period” are presented (BLM Land Use Planning Handbook, H-1610-1, III.A.10, pg. 24 (Rel. 1-1693 03/11/05)). Because the requirement that mitigation produce a net conservation gain, the mitigation plan, and the monitoring plan unquestionably are a “substantial change” when compared to the alternatives included in the Draft RMP, the BLM should have prepared and released for comment a supplement to the Draft RMP. Similarly, the new MLPs, timing restrictions and production limitations were not included in the Draft RMP and must be analyzed in detail.

**Issue Number:** PP-WY-BIGHORN-15-23-2  
**Organization:** WYO-BEN  
**Protestor:** Rick Magstadt

**Issue Excerpt Text:** A supplemental EIS is required under NEPA if: (1) the agency makes substantial changes in the proposed action that are relevant to environmental concerns, 40 CFR § 1502.9(c)(1)(i); or (2) there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.” 40 CFR § 1502.9(c)(1)(ii). A Supplemental Environmental Impact Statement (SEIS) for the proposed Bighorn Basin RMP should have been prepared by

the BLM due to significant post-DEIS information that was utilized in preparing the Preferred Alternative in the FEIS. In response to this protest, the BLM must prepare a Supplemental FEIS and a Revised Proposed Land Use Plan Amendment (PLUPA). The Proposed Action differed dramatically from the DEIS preferred

alternative due to its grounding in significant post-DEIS information not previously subject to public notice and comment. This protest must be upheld because the PLUPA/FEIS does not comply with applicable laws, regulations, policies and planning procedures of the BLM.

### **Summary:**

The BLM must provide a supplemental EIS with notice and an opportunity for comment in compliance with its NEPA and FLPMA obligations.

- None of the alternatives presented in the Draft RMP/Draft EIS included the requirements that mitigation produce a net conservation gain.
- BLM identified three Master Leasing Plans (Absorka Front, Fifteenmile, Bighorn Front) that were not only not included in the EIS analysis for the Bighorn Basin RMP.
- New timing restrictions were added between the Draft EIS and the Final EIS setting new limitations on production operations and sage-grouse winter concentration areas that were not analyzed.

### **Response:**

Considering the new components of the Proposed Action were not specifically described in the Draft EIS, the agencies must provide a supplemental analysis to the public.

#### NEPA Handbook 1790-1, 5.3, page 29

“Supplementation” has a particular meaning in the NEPA context. The Supreme Court has explained that supplementation of an EIS is necessary only if there remains major Federal action to occur. (See *Norton v. Southern Utah Wilderness Alliance*, 542 U.S. 55 (2004)). In the case of a land use plan, implementation of the Federal action is the signing of a Record of Decision.

You must prepare a supplement to a draft or final EIS if, after circulation of a draft or final EIS but prior to implementation of the Federal action:

- you make substantial changes to the proposed action that are relevant to environmental concerns (40 CFR 1502.9(c)(1)(i));
- you add a new alternative that is outside the spectrum of alternatives already analyzed (see Question 29b, CEQ, Forty Most Asked Questions Concerning CEQ's NEPA Regulations, March 23, 1981); or
- there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its effects (40 CFR 1502.9(c)(1)(ii)).

#### 5.3.1 When Supplementation is Appropriate, page 30

“New circumstances or information” are “significant” and trigger the need for supplementation if they are relevant to environmental concerns and bearing on the proposed action and its effects (i.e., if the new circumstances or information would result in significant effects outside the range of effects already analyzed). New circumstances or information that trigger the need for supplementation might include the listing under the Endangered Species Act of a species that



was not analyzed in the EIS; development of new technology that alters significant effects; or unanticipated actions or events that result in changed circumstances, rendering the cumulative effects analysis inadequate.

#### 5.3.2 When Supplementation is Not Appropriate, page 30

Supplementation is not necessary if you make changes in the proposed action that are not substantial (i.e., the effects of the changed proposed action are still within the range of effects analyzed in the draft or final EIS).

If a new alternative is added after the circulation of a draft EIS, supplementation is not necessary if the new alternative lies within the spectrum of alternatives analyzed in the draft EIS or is a minor variation of an alternative analyzed in the draft EIS. In such circumstances, the new alternative may be added in the final EIS.

When new circumstances or information arise prior to the implementation of the Federal action, but your evaluation concludes that they would not result in significant effects outside the range of effects already analyzed, document your conclusion and the basis for it. If the new circumstances or information arise after publication of a draft EIS, document your conclusion in the final EIS. If the new circumstances or information arise after publication of the final EIS, document your conclusion in the ROD.

#### 40 CFR 1502.9: Draft, Final, and Supplemental Statements

(c) Agencies:

(1) Shall prepare supplements to either draft or final environmental impact statements if:

- (i) The agency makes substantial changes in the proposed action that are relevant to environmental concerns; or
- (ii) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.

#### Land Use Planning Handbook, H1601-1, page 24

The proposed RMP and final EIS may also contain modification to the alternatives and the accompanying impact analysis contained in the draft RMP/EIS. However, substantial changes to the proposed action, or significant new information/circumstances collected during the comment period would require supplements to either the draft or final EIS (40 CFR1502.9(c)). The proposed RMP (amendment)/final EIS should clearly show the changes from the draft RMP (amendment)/draft EIS.

After the BLM issued a Draft Bighorn Basin RMP/DEIS in April 2011, it completed a Supplement to the Draft in July 2013 after the BLM Rocky Mountain Regional Interdisciplinary Team identified the need to consider incorporation of additional management actions for the conservation of greater sage-grouse. The Supplement incorporated two additional alternatives (E and F). The Bighorn Basin PRMP/FEIS integrates content from the Draft RMP and Draft EIS (alternatives A through D) and the Supplement (alternatives E and F), and incorporates revisions based on comments received during the public comment periods for each of the aforementioned documents, Chapter 1.

The Bighorn Basin PRMP/FEIS is a variation of the Preferred Alternative D and is within the range of alternatives analyzed in the Draft RMP and Draft EIS and Supplement. The Draft EIS Alternative D analyzed the application of a CSU stipulation within 0.6 mile of an occupied or undetermined lek. The Final EIS has been updated to establish a No Surface Occupancy (NSO) stipulation within 0.6 mile of an occupied lek, as analyzed in Alternative F of the Supplemental EIS, Page 2-12.

Timing limitation stipulations (TLS) have been updated for nesting and early brood-rearing habitat. The Draft RMP/EIS utilized dates from March 1-June 30. The Bighorn Basin PRMP/FEIS has updated those dates to March 15 through June 30, a change of two weeks. In addition, the TLS for winter concentration habitats has been updated from November 15 through March 14 in the Draft RMP/EIS to December 1 through March 14 in the Bighorn Basin PRMP/FEIS, also a change of two weeks (p. 2-12). In addition, timing restrictions that were included in the PRMP/FEIS were analyzed, as part of record number 4120, in the Draft RMP/EIS (Draft RMP/EIS, p. 2-84).

The Draft RMP/EIS outlined the major components of the monitoring strategy, as well as provided a table portraying a list of anthropogenic disturbances that would count against the disturbance cap. A BLM Disturbance and Monitoring Sub-team further enhanced the two Appendices (Appendix L and Y) in the Bighorn Basin PRMP/FEIS (Final EIS page 2-12 Mitigation Strategy; Net Conservation Gain). The net conservation gain strategy is in response to the overall landscape-scale goal which is to enhance, conserve, and restore GRSG and its habitat. All of the action alternatives provided management actions to meet the landscape-scale goal (see Chapter 2, Management Actions 6061 and 6017).

The Supplement, in Chapter 4, included a qualitative analysis and identified that a quantitative analysis would be completed for the Proposed RMP and Final EIS at the WAFWA Management Zone.

The BLM included information regarding Master Leasing Plans in the Draft RMP & Draft EIS. From the Appendix Y. Leasing Reform and Master Leasing Plans 1.0 INTRODUCTION: A MLP may also be completed under other circumstances at the discretion of the BLM. After development of the alternatives analyzed in detail in the Draft RMP and Draft EIS, several groups nominated areas for MLPs. These areas include the Absaroka-Beartooth Front, Fifteen Mile, and the Big Horn Front. The BLM's review of these proposals found they did not meet the criteria for requiring MLP analysis. However, the BLM identified resources of concern within these areas and has developed Evaluation Areas based upon the geographic location of those concerns. These are generally the same resources of concern in the same geographic areas as those identified during scoping. These Evaluation Areas, Absaroka Front (Figure Y-1), Fifteen Mile (Figure Y-2), and Big Horn Front (Figure Y-3), do not alter the alternatives as presented in Chapter 2 or the impact analysis in Chapter 4, but exemplify incorporation of the MLP concept within the Draft RMP and Draft EIS and serve as notification of potential future MLP areas. Additional MLP areas may be identified and analyzed at BLM's discretion at any time. MLPs may be more fully incorporated and disclosed in the Final RMP and EIS. Additionally, The

environmental consequences section of the Draft RMP/EIS addresses stipulations such as wintering area restrictions. This analysis starts in section 4.2.5.3 of the DEIS.

Topics of interest within each of the Evaluation Areas are presented in Table Y-1.

Taken together, these components present a suite of management decisions that present a minor variation of alternatives identified in the Draft RMP/EIS and are qualitatively within the spectrum of alternatives analyzed. As such, the BLM has determined that the Bighorn Basin PRMP/FEIS is a minor variation of the preferred alternative and that the impacts of the Bighorn Basin PRMP/FEIS would not affect the human environment in a substantial manner or to a significant extent not already considered in the EIS. The impacts disclosed in the Bighorn Basin PRMP/FEIS are similar or identical to those described Draft RMP/EIS. FEIS, Chapter 2, page 2-13.

None of the new components of the Proposed Action additions to the PRMP/FEIS constitute “significant new information relevant to environmental concerns and bearing on the proposed action or its impacts” such that supplementation of the Bighorn Basin PRMP/FEIS is required. The impacts disclosed in the Bighorn Basin PRMP/FEIS are similar or identical to those described Draft RMP/EIS. FEIS, Chapter 2, page 2-13. (40 CFR 1502.9(c)(1)).

### ***Best Available Science***

**Issue Number:** PP-WY-BIGHORN-GRSG-15-08-8

**Organization:** WildEarth Guardians

**Protestor:** Erik Molvar

**Issue Excerpt Text:** The record establishes that met towers can result in GRSG population declines (see Cotterel Mountain data reviewed in ‘Wind Power in Wyoming,’ attached to Guardians’ DEIS comments for this plan), and siting these tall structures in the midst of prime nesting habitat is likely to result in a significant level of habitat abandonment by GRSG. The 2-mile buffer for such tall structures is not supported by the science, and instead a 5.3-mile buffer (after Holloran and Anderson 2005) should be applied.

**Issue Number:** PP-WY-BIGHORN-GRSG-15-10-9

**Organization:** Beatty and Wozniak for Exxon/Mobil and XTO Energy

**Protestor:** Bret Sumner

**Issue Excerpt Text:** XTO also protests the BLM’s failure to utilize sufficient, high quality, recent science in developing conservation measures for the proposed final Bighorn RMP.

The Bighorn RMP does not meet the BLM’s science and data requirements under its own Land Use Planning Handbook and Information and Data Quality Guidelines, or under the requirements of NEPA. The BLM Land Use Planning Handbook H-1601-1, Appendix D, p. 13; 40 CFR § 1500.1(b); 40 CFR § 1502.8. In developing a land use plan amendment, the BLM cannot evaluate consequences to the environment, determine least restrictive lease stipulations, or assess how best to promote domestic energy development without adequate data and analysis.

**Issue Number:** PP-WY-BIGHORN-GRSG-15-12-22

**Organization:** Petroleum Association of Wyoming

**Protestor:** Esther Wagner

**Issue Excerpt Text:** The stipulations, restrictions, and conservation measures in the Proposed RMP are largely based on the U.S. Fish and Wildlife Service’s GRSG (Centrocercus urophasianus) Conservation Objections: Final Report (Feb. 2013) (COT Report) and the BLM’s Report on National GRSG Conservation Measures Produced by the BLM GRSG National Technical Team (Dec. 2011) (NTT Report). Reliance on these reports is arbitrary and capricious under the APA. 5 USC § 706(2)(A). The NTT Report and the COT Report failed to utilize the best available science; failed to adhere to the standards of integrity, objectivity, and transparency required by the agency guidelines implementing the Data Quality Act (DQA), Consolidated Appropriates Act of 2001, Pub. L. No. 106-554, § 515, 114 Stat. 2763, 2763A-153 – 2763A-154 (2000); and suffered from inadequate peer review.

**Issue Number:** PP-WY-BIGHORN-GRSG-15-12-23

**Organization:** Petroleum Association of Wyoming

**Protestor:** Esther Wagner

**Issue Excerpt Text:** For example, at least one reviewer has noted numerous technical errors in the NTT Report, including use of citations that are not provided in the “Literature Cited” section. Megan Maxwell, in the BLM’s NTT Report: “Is It the Best Available Science or a Tool to Support a Pre-determined Outcome?”, p. 13-14 (May 20, 2013) (NWMA Review), Attachment 4. In addition, for two of the most frequently cited authors in the NTT Report, J.W. Connelly and B.L. Walker, 34% of the citations had no corresponding source available to review. *Id.* at 14. Additionally, there are articles listed in the “Literature Cited” section that are not directly referenced and do not appear to

have been used within the NTT Report itself.

**Issue Number:** PP-WY-BIGHORN-GRSG-15-12-24

**Organization:** Petroleum Association of Wyoming

**Protestor:** Esther Wagner

**Issue Excerpt Text:** The NTT Report also cites authority misleadingly in a number of cases (NWMA Review at 14). For example, the NTT Report stipulates that with regard to fuel management, sagebrush cover should not be reduced to less than 15% (NTT Report at 26). However, the source cited for this proposition, John W. Connelly, et al., Guidelines to Manage GRSG Populations & their Habitats, 28 Wildlife Society Bulletin 967 (2000) (“Connelly et al. 2000”), does not support the NTT Report’s conclusion. NWMA Review at 14. Rather, Connelly et al. 2000 states that land treatments should not be based on schedules, targets, and quotas. Connelly et al. 2000 at 977. Connelly et al. 2000 distinguished between types of habitat and provided corresponding sagebrush canopy percentages which vary from 10% to 30%, depending on habitat function and quality (NWMA Review at 14) (citing Connelly et al. 2000 at 977, tbl. 3). The NTT Report failed to explain how this nuanced range of canopy cover percentages, which varies for breeding, brood-rearing, and winter habitat, as well as for mesic sites and arid sites, could translate into a range-wide 15% canopy cover standard.

**Issue Number:** PP-WY-BIGHORN-GRSG-15-12-25

**Organization:** Petroleum Association of Wyoming

**Protestor:** Esther Wagner

**Issue Excerpt Text:** The NTT Report also fails to adequately support its propositions

and conclusions. For example, the NTT Report provided no scientific justification for the three percent disturbance cap discussed in that report. Rather, the disturbance cap was based upon the “professional judgment” of the NTT authors and the authors of the studies they cited, which represents opinion, not fact. See Western Energy Alliance, et al., Data Quality Act Challenge to U.S. Department of the Interior Dissemination of Information Presented in the Bureau of Land Management National Technical Team Report at 30 (Mar. 18, 2015) (“NTT DQA Challenge”), Attachment 5. Other scientific literature not considered in the NTT Report has refuted the belief that there is a widely accepted or “magic” number of habitat patch size or population that can defensibly be used to identify a viable population of any species, much less GRSG. Curtis H. Flather, et. al, “Minimum Viable Populations: Is There a ‘Magic Number’ for Conservation Practitioners?”, Trends in Ecology & Evolution 307, 314 (June 2011), Attachment 6. Moreover, the Proposed RMP’s noise restrictions, also recommended by the NTT report, are based upon flawed studies that relied on unpublished data and speculation, and employed suspect testing equipment under unrealistic conditions. NTT DQA Challenge at 42 –46. Conservation measures based upon “professional judgment” and flawed studies do not constitute the best available science, and BLM should not have relied upon these studies or the NTT Report in the Proposed RMP.

**Issue Number:** PP-WY-BIGHORN-GRSG-15-12-26

**Organization:** Petroleum Association of Wyoming

**Protestor:** Esther Wagner

**Issue Excerpt Text:** Finally, the NTT Report failed to cite or include numerous scientific papers and reports on oil and gas operations and mitigation measures that were available at the time the report was created. See NTT DQA Challenge, Exhibit C. For example, the NTT Report failed to cite a 2011 paper (which was made available to the NTT authors) that discusses the inadequacy of the research relied upon by the NTT Report in light of new technologies and mitigation measures designed to enhance efficiency and reduce environmental impacts. E.g., Rob R. Ramey, Laura M. Brown, & Fernando Blackgoat, Oil & Gas Development & GRSG (Centrocercus urophasianus): A Review of Threats & Mitigation Measures, 35 J. of Energy & Development 49 (2011) (“Ramey, Brown, & Blackgoat”), Attachment 7. As explained by Ramey, Brown, and Blackgoat, studies released prior to the NTT Report’s publication were based upon older, more invasive forms of development:

“Current stipulations and regulations for oil and gas development in GRSG habitat are largely based on studies from the Jonah Gas Field and Pinedale anticline. These and other intensive developments were permitted decades ago, using older, more invasive technologies and methods. The density of wells is high, largely due to the previous practice of drilling many vertical wells to tap the resource (before the use of directional and horizontal drilling of multiple wells from a single surface location became widespread), and prior to concerns over GRSG conservation. This type of intensive development set people’s perceptions of what future oil and gas development would look like and what its impact to GRSG would be. These fields, and their effect on GRSG, are not necessarily representative of GRSG responses to less intensive energy development. Recent

environmental regulations and newer technologies have lessened the threats to GRSG.”

Ramey, Brown, & Blackgoat at 70; see also NTT DQA Challenge, Exhibit A at 5 (stating that reliance on older data is not representative of current development and thus an inappropriate basis for management prescriptions). The NTT authors’ refusal to consider this paper and to rely instead on papers that address outdated forms of oil and gas development renders most of the NTT Report’s recommendations for oil and gas development inapplicable to current practices.

**Issue Number:** PP-WY-BIGHORN-GRSG-15-12-27

**Organization:** Petroleum Association of Wyoming

**Protestor:** Esther Wagner

**Issue Excerpt Text:** Not only has the existing level of impact from oil and gas impacts been severely overstated, but, more importantly, the technology associated with oil and gas development has shifted dramatically over the last decade from vertical wells with dense well pad spacing to directional and horizontal wells with significantly less disturbance and fragmentation per section of land developed. Applegate & Owens at 287 – 89. In 2012, the disturbance reduction resulting from this dramatic shift in drilling technology may have approached approximately 70% in Wyoming alone. *Id.* at 289. All pre-2014 literature that purports to characterize oil and gas impacts to GRSG is derived from oil and gas development from vertically drilled fields. As such, the scientific literature on foreseeable impacts to GRSG from oil and gas development is outdated and fails to recognize the fundamental change in drilling technology that is being deployed in oil and

gas producing basins across the United States. The BLM should not rely on the NTT Report when forming oil and gas stipulations and conservation measures in the Proposed RMP, because the NTT Report does not represent the best available science.

**Issue Number:** PP-WY-BIGHORN-GRSG-15-12-28

**Organization:** Petroleum Association of Wyoming

**Protestor:** Esther Wagner

**Issue Excerpt Text:** The COT Report also fails to utilize the best available science, and the BLM inappropriately relied upon it in the Proposed RMP. The COT Report provides no original data or quantitative analyses, and therefore its validity as a scientific document hinges on the quality of the data it employs and the literature it cites. See Western Energy Alliance, et al., Data Quality Act Challenge to U.S. Department of the Interior Dissemination of Information Presented in the U.S. Fish and Wildlife Service Conservation Objectives Team Report, Exhibit A at 1 (Mar. 18, 2015) (“COT DQA Challenge”), Attachment 9. The COT Report, like the NTT Report, fails to cite all of the relevant scientific literature and, as a result, perpetuates outdated information and assumptions. COT DQA Challenge, Exhibit A at 1. For example, the COT Report ignores numerous studies on the effects of predation on GRSG populations, and therefore underestimates the significance of predation as a threat. COT DQA Challenge at 56 – 63. The COT Report also relies upon a paper by Edward Garton from 2011 for its threats analysis, population definitions, current and projected numbers of males, and probability of population persistence. COT Report at iv, 12, 16, 29, 30, 32 (citing Edward O. Garton, et al., GRSG Population Dynamics & Probability of Persistence, in GRSG: Ecology & Conservation of a Landscape Species & Its Habitats 293 (Steven T. Knick & John W.

Connelly eds., 2011) (“Garton et al. 2011”). This paper contains serious methodological biases and mathematical errors. COT DQA Challenge, Exhibit A at 2. Furthermore, the paper’s data and modeling programs are not public and thus not verifiable nor reproducible. *Id.* Finally, the COT Report provides a table assigning various rankings to GRSG threats, but gives no indication that any quantitative, verifiable methodology was used in assigning these ranks. See COT Report at 16 – 29, table 2. Absent a quantifiable methodology, these rankings are subjective and the BLM should not rely upon any conservation measures derived from them.

**Issue Number:** PP-WY-BIGHORN-GRSG-15-12-29

**Organization:** Petroleum Association of Wyoming

**Protestor:** Esther Wagner

**Issue Excerpt Text:** The COT Report also fails to even mention hunting, which is a well-documented source of GRSG mortality. See generally COT Report; Kerry P. Reese & John W. Connelly, Harvest Mgmt. for GRSG: A Changing Paradigm for Game Bird Mgmt., in GRSG: Ecology & Conservation of a Landscape Species & Its Habitats 101, 106 tbl. 7.3 (Steven T. Knick & John W. Connelly eds., 2011) (showing estimated harvest of 207,433 birds from hunting from 2001 through 2007) (“Reese & Connelly”). Comparing the FWS reported harvest rates in the 2010 12-month finding on the GRSG, 75 Fed. Reg. 13,909 (Mar. 23, 2010), to the population projections developed by Garton et al. 2011 suggests that harvest rates for GRSG exceeded 20% of the overall spring population for approximately 25 years from 1970 thru 1995. Harvest rate declines after 1995 correspond to GRSG population increases since that time. BLM and the Department of the Interior have failed to discuss or

reconcile these two data sets, both of which were relied upon in the 2010 listing. The best available scientific data suggests an ongoing decrease in the harvest rate that is deemed acceptable from 30% in 1981 to 20-25% in 1987, to 5-10% in 2000. Reese & Connelly at 110 – 11. High harvest rates coupled with limited lek counts suggest hunting may have been a primary cause of suggested significant population declines from the 1960s through the 1980s. Further, from the 2010 12-month finding, FWS suggests over 2.3 million birds were harvested in the 1970s alone.

**Issue Number:** PP-WY-BIGHORN-GRSG-15-12-30

**Organization:** Petroleum Association of Wyoming

**Protestor:** Esther Wagner

**Issue Excerpt Text:** The NTT and COT Reports do not satisfy these standards. Both reports rely on faulty studies with questionable methodology and assumptions, as detailed above. The NTT Report contained numerous references to studies for which it did not provide citations, and it failed to provide supporting data for many of the non-public studies it cited. NWMA Review at 14; NTT DQA Challenge at 25 – 26. The NTT Report gave no reason for this omission of key data, which is inconsistent with the guidelines implementing the DQA. See OMB Guidelines, V(3)(b)(ii)(B), 67 Fed. Reg. at 8459 (requiring that data and methodology be made sufficiently transparent that an independent reanalysis can be undertaken, absent countervailing interests in privacy, trade secrets, intellectual property, and confidentiality protections); DOI Guidelines, II(2), at 2; BLM Guidelines, 2(c), at 8. Similarly, the NTT Report did not provide any evidence that, because supporting data were not provided, an exceptionally rigorous robustness check was performed as required.

OMB Guidelines, V(3)(b)(ii)(B)(ii), 67 Fed. Reg. at 8459; BLM Guidelines, 2(c), at 8. The studies upon which the NTT Report relies are therefore unverifiable and not reproducible, which is inconsistent with the DQA guidelines. OMB Guidelines, V(3)(b)(ii)(B), 67 Fed. Reg. at 8459; BLM Guidelines, 2(c), at 8. The COT Report similarly cited frequently to a study whose data and programs are not public and, therefore, not reproducible. COT DQA Challenge, Exhibit A at 7.

**Issue Number:** PP-WY-BIGHORN-GRSG-15-12-31

**Organization:** Petroleum Association of Wyoming

**Protestor:** Esther Wagner

**Issue Excerpt Text:** Both the NTT and COT Reports lacked adequate peer review. OMB Guidelines generally state that information is considered objective if the results have been subjected to formal, independent, external peer review, but that presumption is rebuttable upon a persuasive showing that the peer review was inadequate. OMB Guidelines, Part V(3)(b), 67 Fed. Reg. at 8459. Because the NTT and COT Reports suffered from inadequate peer review, their results and conclusions cannot be considered objective.

**Issue Number:** PP-WY-BIGHORN-GRSG-15-15-1

**Organization:** Defenders of Wildlife

**Protestor:** Mark Salvo

**Issue Excerpt Text:** In fact, there is no scientific support for using the 0.6-mile lek buffer to conserve nesting and brood-rearing habitat. The BLM has already acknowledged in numerous draft GRSG plans that a .25-mile lek buffer is also inadequate to protect GRSG from surface disturbance in important seasonal habitats.

**Issue Number:** PP-WY-BIGHORN-GRSG-15-16-1

**Organization:** American Wild Horse Preservation

**Protestor:** Deniz Bolbol

**Issue Excerpt Text:** The PRMP fails to provide any data or science to support the proposed continued management of the McCullough Peaks and Fifteen Mile HMAs in the Planning Area at AMLs of 70 to 160/140 horses. Indeed, it is well documented by the BLM's own equine geneticist that drastic population contractions, such as reducing horse populations to a low AML of 70 adult horses, creates genetic issues and threatens the long-term genetic health of the population and individual horses.

**Issue Number:** PP-WY-BIGHORN-GRSG-15-16-7

**Organization:** American Wild Horse Preservation

**Protestor:** Deniz Bolbol

**Issue Excerpt Text:** The PRMP fails to consider or analyze that the method currently used for calculating AUMs has not kept pace with recent dramatic increases in average weight and size of cattle due to advances in veterinary medicine and animal husbandry. These larger cattle consume significantly more in forage and water resources per capita than did their ancestors of just a quarter century ago.

**Issue Number:** PP-WY-BIGHORN-GRSG-15-16-8

**Organization:** American Wild Horse Preservation

**Protestor:** Deniz Bolbol

**Issue Excerpt Text:** The RMP fails to consider the lack of science for the AUM system utilized for livestock management.



**Issue Number:** PP-WY-BIGHORN-GRSG-15-04-16

**Organization:** Devon Energy Corporation

**Protestor:** Dru-Bower Moore

**Issue Excerpt Text:** The BLM's use of a noise limitation is not only inconsistent with the Wyoming Executive Order, it is not based on peer-reviewed data. This ambient noise range was determined from average noise readings of studies conducted in national parks and wilderness areas outside Wyoming (EPA. 1971 Community Noise (ed. EPA); Lynch, E., Joyce, D. & Fristrup, K. 2011 An assessment of noise audibility and sound levels in U.S. National Parks. Landscape Ecology 26, 1297-1309), as well as the minimum noise readings taken in the Pinedale area in Wyoming (Harvey, K. 2009

Pinedale Anticline Project Area GRSG Monitoring: Noise Monitoring Report (ed. P. A. P. Office). This ambient noise level is not scientifically supported and has not been proven to be representative of average ambient noise on multiple use lands in Wyoming. As such, any reference to 20 to 24 dBA as an ambient noise level must be disregarded and removed and revised to reflect the EO which limits noise to 10 dBA above ambient in core areas and directs that ambient noise be determined by measurements taken at the perimeter of a lek at sunrise during active lek season (March 1 to May 15). The BLM has simply not analyzed or justified why noise restrictions would be required outside of the lekking period.

### **Summary:**

The Bighorn Basin PRMP/FEIS does not comply with the National Environmental Policy Act, the Data Quality Act, and the Land Use Planning Handbook's guidance to use the best available science because it relies on reports (e.g., COT Report, NTT Report, and the Baseline Environmental Report), which do not comply with standards of integrity, objectivity, and transparency.

In addition, the Bighorn Basin PRMP/FEIS does not comply with the National Environmental Policy Act, the Data Quality Act, and the Land Use Planning Handbook's guidance to use the best available science in determining lek buffer distances in the Proposed Alternative, relying on ambient noise ranges that are not scientifically supported or proved to be representative of average ambient noise levels in Wyoming, determining AMLs in the McCullough Peaks and Fifteen Mile HMAs, determining AUM calculations.

### **Response:**

Before beginning the Bighorn Basin PRMP/FEIS, data from all sources, adequacy of existing data, data gaps, and the type of data necessary to support informed management decisions at the land-use plan level.

In March 2012, the FWS initiated a collaborative approach to develop range-wide conservation objectives for the GRSG to inform the 2015 decision about the need to list the species and to inform the collective conservation efforts of the many partners working to conserve the species. In March 2013, this team of State and FWS representatives released the Conservation Objectives Team (COT) report based upon the best scientific and commercial data available at the time that identifies key areas for GRSG conservation, key threats in those areas, and the extent to which

they need to be reduced for the species to be conserved. The report serves as guidance to Federal land management agencies, State GRSG teams, and others in focusing efforts to achieve effective conservation for this species. The COT Report qualitatively identifies threats/issues that are important for individual populations across the range of GRSG, regardless of land ownership.

A National Technical Team (NTT) was formed as an independent, science-based team to ensure that the best information about how to manage the GRSG is reviewed, evaluated, and provided to the BLM in the planning process. The group produced a report in December 2011 that identified science-based management considerations to promote sustainable GRSG populations. The NTT is staying involved as the BLM work through the Strategy to make sure that relevant science is considered, reasonably interpreted, and accurately presented; and that uncertainties and risks are acknowledged and documented.

Both the NTT report and the COT report tier from the WAFWA GRSG Comprehensive Conservation Strategy (Stiver et al. 2006).

The Summary of Science, Activities, Programs and Policies that Influence the Rangewide Conservation of GRSG (also referred to as the Baseline Environmental Report [BER]; Manier et al. 2013) then provides complimentary quantitative information to support and supplement the conclusions in the COT. The BER assisted the BLM in summarizing the effect of their planning efforts at a range-wide scale, particularly in the affected environment and cumulative impacts sections. The BER looked at each of the threats to GRSG identified in the Fish and Wildlife Service's "warranted but precluded" finding for the species. For these threats, the report summarized the current scientific understanding, as of report publication date (June 2013), of various impacts to GRSG populations and habitats. The report also quantitatively measured the location, magnitude, and extent of each threat. These data were used in the planning process to describe threats at other levels, such as the sub-regional boundary and WAFWA Management Zone scale, to facilitate comparison between sub-regions. The BER provided data and information to show how management under different alternatives may meet specific plans, goals, and objectives.

Additionally, the BLM consulted with, collected, and incorporated data from other agencies and sources, including but not limited to the U.S. Fish and Wildlife Service and 15 state agencies including the Wyoming Game and Fish Department and relied on numerous data sources and scientific literature to support its description of baseline conditions (PRMP/FEIS, Chapter 3) and impact analysis (PRMP/FEIS, Chapter 4). A list of information and literature used is contained in Chapter 6 and Section 7.1.9 of the Bighorn Basin PRMP/FEIS.

As a result of these actions, the BLM gathered the necessary data essential to make a reasoned choice among the alternatives analyzed in detail in the PRMP/FEIS, and provided an adequate analysis that led to an adequate disclosure of the potential environmental consequences of the alternatives (PRMP/FEIS, Chapter 4). As a result, the BLM has taken a "hard look," as required by the NEPA, at the environmental consequences of the alternatives in the PRMP/FEIS to enable the decision maker to make an informed decision. Finally, the BLM has made a reasonable effort to collect and analyze all available data.

The BLM considered a variety of literature with regard to lek buffer size, including the COT Report, the NTT Report, and Manier et al. 2013. The alternatives in the Bighorn Basin PRMP/FEIS considered a range for lek buffers sizes and dates (Record #4117, p. 2-151; Record #4118, p. 2-154). The impacts of the various buffers are analyzed in Section 4.4.9 of Chapter 4 (p.4-292). As such, the BLM has considered the best available science when determining lek buffers.

The Proposed Alternative in the PRMP/FEIS is consistent with the Wyoming Executive Order in limiting noise to 10 dBA (see Record #4121 on page 2-24 and 2-157). As new research is completed, new specific limitations would be coordinated with the WGFD and partners. As such, the BLM has considered the best available science when determining noise restrictions and has incorporated a mechanism to consider additional science as it becomes available.

The Bighorn Basin PRMP/FEIS would manage the Fifteen Mile HMA at an initial appropriate management level of 70 to 160 wild horses and the McCullough Peak HMA for an initial appropriate management level of 70 to 140 wild horses (p. 2-166). As disclosed on page 4-350, “Managing the initial appropriate management level of wild horses in the Fifteenmile HMA (70 to 160 breeding adults) and the McCullough Peaks HMA (70 to 140 breeding adults) to be adjusted as necessary based upon monitoring would result in beneficial long-term impacts to wild horses from maintaining genetic viability in the HMAs. Allowing free movement of herds in HMAs would further increase the genetic viability of wild horse populations in HMAs. Employing selective removal criteria in accordance with current national policies during periodic gathers to increase the prevalence of desired genetic characteristics and avoid genetic depression would result in long-term benefits to wild horses by increasing long-term health and genetic viability.”

The Bighorn Basin PRMP/FEIS identifies areas available and unavailable for livestock grazing (Record #6275; p. 2-249). The allocation of AUMs will occur during the permit process. As explained on page 3-200, “Permitted use is the amount of forage available for livestock grazing under a permit and is expressed in AUMs. Permitted use includes active use, suspended use, and temporary suspended use. Active use is the maximum amount of forage generally available in any given year under a permit. Due to fluctuating forage production, in any given year the BLM might authorize more or less forage for use for livestock grazing under a valid permit due to fluctuating forage production. The BLM determines stocking rates by monitoring the condition and amount of vegetation on a given site to ensure that adequate plant recovery time is provided and ample residual forage remains after livestock grazing to provide for healthy rangelands and other uses. Monitoring climate and water availability has resulted in forage availability adjustments, and by extension, adjustments to the numbers of livestock on the range.” As such the determination of permitted use will take into considering site-specific conditions to account for forage availability and water resources.

### ***Public Participation***

**Issue Number:** PP-WY-BIGHORN-GRSG-15-01-5

**Organization:** Wyoming Wilderness Association  
**Protestor:** Kyle Wilson

**Issue Excerpt Text:** The BLM failed to comply with NEPA and provide an opportunity for public comment regarding new information. In the Draft RMP, the BLM identified 571,288 acres in 51 Lands with Wilderness Characteristics units (Bighorn Basin DRMP at 1175). This acreage changed in the PRMP, where the Bighorn Basin Field Office identified 476,349 acres (in 43 areas) of Lands with Wilderness Characteristics in the planning area. The public has not had an opportunity to comment on this new information in the planning process. The Draft RMP comment period occurred in 2011 and the PRMP was released in May 2015. The PRMP states: During the time between the Draft EIS, and the final EIS, the BLM reevaluated data from the public, resulting in 43 Lands with Wilderness Characteristics (476,398 acres). Bighorn Basin PRMP at 3-191. However, as stated in the above section, the BLM has not made a record of their findings available to the public regarding all citizens Lands with Wilderness Characteristics information, if it does exist. Given this substantial change to the Lands with Wilderness Characteristics acreage, which constitutes new information, there must be a public comment period.

**Issue Number:** PP-WY-BIGHORN-GRSG-15-02-2

**Organization:** Rocky Mountain Power (PacifiCorp)

**Protestor:** R. Jeff Richards

**Issue Excerpt Text:** The Wyoming Bighorn Basin LUPA states, “The BLM has incorporated management of SFAs into its proposed plan management approach for GRSG” (Chapter 7, page 7-6). The BLM has already established Priority Areas of Concern (PACs) and Habitat Management Areas and therefore another category is unnecessary and should be removed from consideration. Additionally, the

establishment of SFAs was not included in the DEIS which did not allow the public an opportunity to comment as required by NEPA.

**Issue Number:** PP-WY-BIGHORN-GRSG-15-04-10

**Organization:** Devon Energy Corporation

**Protestor:** Dru-Bower Moore

**Issue Excerpt Text:** Devon protests substantial changes made between the draft and Proposed Bighorn RMP without notice and an opportunity for public comment. In particular, Devon protests the adoption of three Master Leasing Plans (Absorka Front, Fifteenmile, Bighorn Front) that were not only not included in the draft or the supplemental draft EIS, for the Bighorn Basin RMP, but were expressly rejected as unnecessary in the draft documents. Draft Bighorn RMP, Appd. Y, pg. Y-1. These proposed changes violate both NEPA and FLPMA because they were not included and were rejected in the Draft Bighorn RMP and because the BLM did not allow the public an opportunity to meaningfully comment on these provisions. Further, the BLM added new limitations on production operations and included the identification of GRSG winter concentration areas in the Worland Field Office for the first time in the Final EIS and Proposed RMP. Proposed Bighorn RMP, Record No. 4119, pg. 2-155, Map 42 (GRSG oncentration areas); Record No. 4079, pg. 2-144 (production).

**Issue Number:** PP-WY-BIGHORN-GRSG-15-10-4

**Organization:** Beatty & Wozniak for Exxon/Mobil & XTO Energy

**Protestor:** Bret Sumner

**Issue Excerpt Text:** The RMP reflects a significant new alternative and proposed management structure that was not

previously provided to the public, including state and local agencies and other cooperating agencies and stakeholders. Nor was this significantly revised RMP developed with the benefit of supplemental NEPA analysis. These failures violate FLPMA and NEPA, as well as this Administration's policy on transparent and open government.

**Issue Number:** PP-WY-BIGHORN-GRSG-15-10-5

**Organization:** Beatty & Wozniak for Exxon/Mobil & XTO Energy

**Protestor:** Bret Sumner

**Issue Excerpt Text:** Under NEPA, the BLM is required to supplement existing NEPA documents when, as it has done for the RMP, it makes substantial changes to the proposed action. 40 CFR § 1502.9(c)(1)(i); *Pennaco Energy, Inc. v. U.S. Dept of the Interior*, 377 F.3d 1147, 1151 (10th Cir. 2004). Here, the RMP reflects an entirely new management structure, premised primarily upon the GRSG Conservation Objectives Team report (COT report), which had not been previously analyzed in detail or provided to the public, and cooperating agencies, for review and comment. Yet, the RMP, as significantly revised, was issued without supplemental NEPA analysis, and without additional public review or comment. This failure by the BLM is a plain violation of NEPA. Moreover, President Obama issued an Executive Order on January 18, 2011 directing all federal agencies, including the BLM, to exercise regulatory authority "on the open exchange of information and perspectives among State, local and tribal officials" in a manner to promote "economic growth, innovation, competitiveness and job creation". The BLM has not complied with this Executive Order with respect to the issuance of the significantly new and different RMP which reflects a management structure substantively and substantially different from the draft

released for public review and comment.

**Issue Number:** PP-WY-BIGHORN-GRSG-15-12-11

**Organization:** Petroleum Association of Wyoming / Western Energy Alliance

**Protestor:** Esther Wagner

**Issue Excerpt Text:** The Trades protest substantial changes made between the Draft RMP, the Supplement to the Draft RMP (collectively the Draft EIS or Draft RMP), and Proposed RMP without notice and an opportunity for public comment. In particular, the Trades protest the adoption of a whole new GRSG implementation policy found in Appendix Y. Although the BLM maintains that components of the GRSG implementation plan were analyzed in other alternatives, the vast majority of the information is completely new. The Proposed RMP contains a number of significant elements that were not included in any of the alternatives analyzed in the Draft EIS, including the requirement that mitigation produce a net conservation gain, the mitigation plan, and the monitoring plan. These proposed changes violate NEPA because they were not included in the Draft RMP, as the Supplement to the Draft RMP and because BLM did not allow the public an opportunity to meaningfully comment on these provisions.

**Issue Number:** PP-WY-BIGHORN-GRSG-15-12-3

**Organization:** Petroleum Association of Wyoming / Western Energy Alliance

**Protestor:** Esther Wagner

**Issue Excerpt Text:** Third, BLM Worland Field Office appears to have mapped and identified several sage- grouse winter concentration areas. Proposed RMP, Record No. 4119, pg. 2-155, Map 42. As noted above, the identification of these areas in the

Final EIS and Proposed RMP is inappropriate as they were identified for the very first time in the Final EIS in violation of NEPA.

**Issue Number:** PP-WY-BIGHORN-GRSG-15-19-1

**Organization:** Avian Power Line Interaction Committee

**Protestor:** Mike Best

**Issue Excerpt Text:** The BLM has already established Priority Areas of Concern (PACs) and Habitat Management Areas and therefore another category is unnecessary and should be removed from consideration. Additionally, the establishment of SFAs was not included in the DEIS which did not allow the public an opportunity to comment as required by NEPA.

**Issue Number:** PP-WY-BIGHORN-GRSG-15-21-4

### **Summary:**

The BLM failed to comply with NEPA when it did not provide an opportunity for public input and comment regarding new information between the Draft and Final EIS.

- The Lands with Wilderness Characteristics acreage changed between the Draft and Final EIS changing the effects analysis. The establishment of SFAs was not included in the Draft RMP/EIS. The net conservation gain requirement was included only in the PRMP. The public did not have an opportunity to comment on these substantial changes.
- The adoption of Master Leasing Plans that were not included in the draft or the supplemental draft EIS for the Bighorn Basin RMP, and were determined as unnecessary in the draft documents, but then included in the PRMP.
- The RMP reflects a new management structure, premised on the COT report, which had not been previously analyzed in detail or provided to the public for review and comment.

### **Response:**

The CEQ regulations explicitly discuss agency responsibility towards interested and affected parties at 40 CFR 1506.6. The CEQ regulations require that agencies shall: (a) Make diligent efforts to involve the public in preparing and implementing their NEPA procedures (b) Provide public notice of NEPA-related hearings, public meetings, and the availability of environmental documents so as to inform those persons and agencies that may be interested or affected. Public involvement entails “The opportunity for participation by affected citizens in rule making, decision making, and planning with respect to the public lands, including public meetings or hearings . . . or advisory mechanisms, or other such procedures as may be necessary to provide

**Organization:** Greater Yellowstone Coalition

**Protestor:** Bradley Johnson

**Issue Excerpt Text:** The Bighorn Basin PRMP introduces new information regarding Zones in the Absaroka Front Master Leasing Plan (Table 2-9, p. 2-109). This new management concept has not been referenced in the Draft or Supplemental RMP/EIS and there has been no opportunity for public comment on this new concept. The PRMP reduced Lands with Wilderness Characteristics units by 9 areas that make up 89,470 acres (19%) compared to what was in the Draft RMP. The PRMP states that, “During the time between the Draft EIS, and the Final EIS, the BLM reevaluated data submitted from the public, resulting in 43 Lands with Wilderness Characteristics (476,398 acres)” (p.3-191). This reduction is considered new information that the public has not had an opportunity to comment on.

public comment in a particular instance” (FLPMA, Section 103(d)). Several laws and Executive orders set forth public involvement requirements, including maintaining public participation records. The BLM planning regulations (43 CFR 1601-1610) and the CEQ regulations (40 CFR 1500-1508) both provide for specific points of public involvement in the environmental analysis, land use planning, and implementation decision-making processes to address local, regional, and national interests. The NEPA requirements associated with planning have been incorporated into the planning regulations.

When major changes are made to the draft EIS, the final EIS should be a complete full text document. The content of a full text document is substantially the same as the corresponding draft EIS except that it includes copies of substantive comments on the draft EIS, responses to those comments and changes in or additions to the text of the EIS in response to comments (40 CFR 1503.4). A full text final EIS may incorporate by reference some of the text or appendices of the draft EIS.

As a result of public comments, best science, cooperating agency coordination, and internal review of the Draft EIS and the Supplement, the BLM has developed the Bighorn Basin PRMP/FEIS for managing BLM-administered land within the Bighorn Basin Planning Area. The Bighorn Basin PRMP/FEIS focuses on addressing public comments, while continuing to meet the BLM’s legal and regulatory mandates. The Bighorn Basin PRMP/FEIS is a variation of the Preferred Alternative D and is within the range of alternatives analyzed in the Draft RMP and Draft EIS and Supplement (Chapter 2, page 2-13). Based on comments received during this period, the BLM revised the RMP where appropriate. Changes made to the Draft RMP and Draft EIS based on comments are reflected in the Proposed RMP and Final EIS. The Comment Analysis Report summarizes all substantive comments received during the 135-day public comment period and the BLM responses to those comments, including how the document was revised based on comments. The report is presented in Appendix A (Chapter 5, 5-6).

After the BLM issued a Draft Bighorn Basin RMP/EIS in April 2011, it completed a Supplement to the Draft in July 2013 after the BLM Rocky Mountain Regional Interdisciplinary Team identified the need to consider incorporation of additional management actions for the conservation of greater sage-grouse. The Supplement incorporated two additional alternatives (E and F). The Bighorn Basin PRMP/FEIS integrates content from the Draft RMP and Draft EIS (alternatives A through D) and the Supplement (alternatives E and F), and incorporates revisions based on comments received during the public comment periods for each of the aforementioned documents.

The Lands with Wilderness Characteristics inventory process utilized by the Cody and Worland Field Offices is consistent with the process for conducting inventories for lands with wilderness characteristics on BLM lands outlined in Manual 6310. Section 201 of FLPMA requires the BLM to maintain an inventory of all public lands and their resources. As specifically outlined in BLM Manual 6310, the lands with wilderness characteristics inventory included the following steps:

- A boundary delineation process to define wilderness characteristic inventory unit boundaries, which can be based on existing wilderness characteristics inventory units. The boundary is

generally based on the presence of wilderness inventory roads (a route analysis is conducted on all identified vehicle passageways to determine if the route is considered a road for wilderness inventory purposes), federal ownership boundaries, or developed right-of-ways.

- An analysis of wilderness characteristics, including criteria for sufficient size, naturalness, and outstanding opportunities for either solitude or primitive and unconfined recreation. In addition, it may also possess supplemental values.
- A boundary delineation process to define the area with wilderness characteristics to exclude wilderness inventory roads and other substantially noticeable human-caused impacts.

The BLM performed an inventory maintenance for all BLM-administered public lands within the Planning Area (see an example inventory form in Appendix S), including areas recommended as part of the “Wilderness at Risk: Citizens’ Wilderness Proposal for Wyoming BLM-administered Lands” submitted to the BLM by the Wyoming Wilderness Association in February 2004, 2011, and once again in 2012

(Wyoming Wilderness Coalition 2004, Wyoming Wilderness Coalition 2011, Wyoming Wilderness Coalition 2012).

In addition, the Biodiversity Conservation Alliance submitted wilderness proposals in 2010 to the BLM. The wilderness proposals promoted the designation of approximately 1.1 million acres of BLM-administered lands for wilderness statewide, of which approximately 283,709 acres are in the Planning Area. During the inventory, BLM reviewed comments made during public scoping and recommendations developed during an internal review of multiple-use lands in the Planning Area, as well as incorporated wilderness data submitted by Environmental Resources Group (ERG), an environmental service company contracted out by the cooperators to assist in working on the RMP revision, Local Government Cooperating Agencies, and other local citizens. Consistent with WO IM 2013-106, these comments were integrated into the wilderness characteristics inventories and, as a result, some previously mapped lands with wilderness characteristic’s boundaries were adjusted, and other areas previously believed to possess wilderness characteristics were dropped from the inventory after being found to lack those characteristics. The original inventory identified 52 lands with wilderness characteristics (565,868 acres) in the Planning Area (Map 79). Table 3-50 lists the acreage and other resource values for each area. The final evaluation forms are available for public review at the WFO and the CYFO and on their respective websites. During the time between the Draft EIS, and the Final EIS, the BLM reevaluated data submitted from the public, resulting in 43 lands with wilderness characteristics (476,398 acres). At present, the BLM manages lands with wilderness characteristics in accordance with the current RMPs. No specific management for retention of wilderness characteristics exists under the current RMPs. Current BLM Manual 6320 establishes the BLM’s approach for considering lands with wilderness characteristics in land use planning documents (e.g., RMP revisions), and provides national guidance to the BLM on how to meet its obligation to identify and consider lands with wilderness characteristics. The guidance states that “The BLM will analyze the effects of: (1) plan alternatives on lands with wilderness characteristics, and (2) management of lands with wilderness characteristics on other resources and resource uses. The decision making process the BLM uses to evaluate lands with wilderness characteristics during the preparation of land use plans are the management alternatives (see



Chapter 2 of this document for potential management actions for lands with wilderness characteristics in the Planning Area). Under Manual 6320, outcomes of this planning process may include “(1) emphasizing other multiple uses as a priority over protecting wilderness characteristics; (2) emphasizing other multiple uses while applying management restrictions (conditions of use, mitigation measures) to reduce impacts to wilderness characteristics; (3) the protection of wilderness characteristics as a priority over other multiple uses.” In making lands with wilderness characteristics management decisions, the BLM will consider, as outlined in Manual 6310, manageability, resource values and uses, and the congressional release of WSAs. Table 3-50 provides information on other resource uses and values within each area with wilderness characteristics. Management for lands with wilderness characteristics appears in Table 3-51. FEIS at 3-190.

The mitigation measures and conservation actions (Appendix L) for proposed projects or activities in PHMAs will be identified as part of the National Environmental Policy Act (NEPA) environmental review process, through interdisciplinary analysis involving resource specialists, project proponents, government entities, landowners or other Surface Management Agencies. Those measures selected for implementation will be identified in the Record of Decision (ROD) or Decision Record (DR) for those authorizations and will inform a potential lessee, permittee, or operator of the requirements that must be met when using BLM-administered public lands and minerals to mitigate, per the mitigation hierarchy referenced above, impacts from the activity or project such that greater sage-grouse goals and objectives are met. Because these actions create a clear obligation for the BLM to ensure any proposed mitigation action adopted in the environmental review process is performed, there is assurance that mitigation will lead to a reduction of environmental impacts in the implementation stage and include binding mechanisms for enforcement (CEQ Memorandum for Heads of Federal Departments and Agencies 2011). Appendix Y, Y-4.

The BLM included information regarding Master Leasing Plans in the Draft RMP/EIS. From the Appendix Y. Leasing Reform and Master Leasing Plans 1.0 INTRODUCTION: “A MLP may also be completed under other circumstances at the discretion of the BLM. After development of the alternatives analyzed in detail in the Draft RMP and Draft EIS, several groups nominated areas for MLPs. These areas include the Absaroka-Beartooth Front, Fifteen Mile, and the Big Horn Front. BLM’s review of these proposals found they did not meet the criteria for requiring MLP analysis. However, the BLM identified resources of concern within these areas and has developed Evaluation Areas based upon the geographic location of those concerns. These are generally the same resources of concern in the same geographic areas as those identified during scoping. These Evaluation Areas, Absaroka Front (Figure Y-1), Fifteen Mile (Figure Y-2), and Big Horn Front (Figure Y-3), do not alter the alternatives as presented in Chapter 2 or the impact analysis in Chapter 4, but exemplify incorporation of the MLP concept within the Draft RMPEIS and serve as notification of potential future MLP areas. Additional MLP areas may be identified and analyzed at BLM’s discretion at any time. MLPs may be more fully incorporated and disclosed in the Bighorn Basin PRMP/FEIS. Topics of interest within each of the Evaluation Areas are presented in Table Y-1. The environmental consequences section of the Draft EIS addresses stipulations such as wintering area restrictions”. This analysis starts in section 4.2.5.3 of the Draft RMP/EIS.

Additionally, the environmental consequences section of the Draft EIS addresses stipulations such as wintering area restrictions. This analysis starts in section 4.2.5.3 of the Draft RMP/EIS.

The agency provided adequate public involvement in the planning and NEPA process.

### *Impacts – Greater Sage-Grouse*

**Issue Number:** PP-WY-BIGHORN-GRSG-15-08-11

**Organization:** WildEarth Guardians

**Protestor:** Erik Molvar

**Issue Excerpt Text:** The EIS fails to discuss impacts resulting from development and sagebrush removal in winter habitat or respond to comments raising these issues. Nor does it provide any sense of the long-term impact of winter habitat loss on the persistence of GRSG in the Bighorn Basin. The analysis simply describes the impacts of the PRMP (Alternative D) in relative terms, i.e., as having impacts on GRSG “more adverse” or “less adverse” than the impacts of other alternatives. See FEIS 4-335. Even the impacts of Alternative A (the main reference point for this discussion) are discussed in highly general terms, providing no sense of the viability of GRSG under current management direction.

**Issue Number:** PP-WY-BIGHORN-GRSG-15-08-12

**Organization:** WildEarth Guardians

**Protestor:** Erik Molvar

**Issue Excerpt Text:** For no alternative does the BLM provide any analysis of whether the proposed management is likely to result in an increase, maintenance, or further decrease of GRSG populations, or describe the relative magnitude of projected increases or decreases, or what effect management alternatives will have on population persistence projections (Garton et al. 2015).

**Issue Number:** PP-WY-BIGHORN-GRSG-15-14-14

**Organization:** Western Watersheds

**Protestor:** Travis Bruner

**Issue Excerpt Text:** For example, there is no analysis of whether the proposed disturbance cap is appropriate to GRSG populations within the planning area, or whether the Wyoming GRSG populations can actually withstand the 5% disturbance cap and exemptions proposed in the plan, combined with the failure to implement current science regarding habitat disturbance, lek buffers or the massive increases over current levels of disturbance and habitat degradation, or the fact that the proposed measures, limited as they are, do not cover over significant areas of the leks and nesting habitat. This is a clear failure to take the required “hard look” under NEPA.

**Issue Number:** PP-WY-BIGHORN-GRSG-15-14-15

**Organization:** Western Watersheds

**Protestor:** Travis Bruner

**Issue Excerpt Text:** For no alternative does the BLM provide any analysis of whether the proposed management is likely to result in an increase, maintenance, or further decrease of GRSG populations, or describe the relative magnitude of projected increases or decreases, or what effect management alternatives will have on population persistence projections (Garton et al. 2015). This type of analysis has been performed for some or all of Wyoming under various scenarios in the scientific literature (e.g., Holloran 2005, Copeland et

al. 2013, Taylor et al. 2012).

**Issue Number:** PP-WY-BIGHORN-GRSG-15-14-18

**Organization:** Western Watersheds

**Protestor:** Travis Bruner

**Issue Excerpt Text:** The FEIS regularly repeats the conclusion that “The USFWS has informed the BLM that the combined effect of these overlapping and reinforcing mechanisms give USFWS confidence that

the lek buffer distances in the Core Area Strategy will be protective of GRSG.” FEIS at 1-8, yet the FEIS is entirely silent as to how this conclusion, which the BLM treats as an assumed fact, was arrived at. And while the USFWS may have “informed the BLM”, it is BLM’s duties under NEPA to inform the public. This appears to be more of the smoke and mirrors the BLM hopes will be believed. Unfortunately, failure to analyze this issue and discuss the literature related to lek buffers violates NEPA.

### **Summary:**

The Bighorn Basin PRMP/FEIS fails to adequately analyze impacts to GRSG because:

- The EIS fails to address comments that identify impacts from development and loss of sagebrush in winter habitat. Analyses are too general to understand impacts between alternatives;
- The analysis of the alternatives do not address whether the proposed management is likely to result in an increase, maintenance, or further decrease of GRSG populations;
- There is no analysis of whether the proposed disturbance cap is appropriate to Wyoming GRSG. The plan fails to implement current science regarding habitat disturbance, lek buffers, disturbance, and habitat degradations. Proposed measures are limited and do not cover significant areas of leks and nesting habitat; and
- The Bighorn Basin PRMP/FEIS does not provide analysis supporting USFWS’s conclusion that “The USFWS has informed the BLM that the combined effect of these overlapping and reinforcing mechanisms give USFWS confidence that the lek buffer distances in the Core Area Strategy will be protective of breeding GRSG.” Failure to analyze literature related to lek buffers violates NEPA.

### **Response:**

The BLM is required to assess, consider, and respond to all substantive comments received (40 CFR 1503.4). Substantive comments are those that reveal new information, missing information, or flawed analysis that would substantially change conclusions (BLM Handbook H – 1601-1, p. 23-24).

NEPA directs that data and analysis in the EIS must be commensurate with the importance of the impact (40 CFR 1502.15) and the NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail (40 CFR 1500.1)(b)). In compliance with NEPA, The BLM considered all public comments submitted on the Draft RMP/EIS. The BLM complied with 40 CFR 1503.4 by performing a detailed comment analysis that assessed and considered all substantive comments received. Appendix A of the Bighorn Basin Resource Management Plan Revision presents the BLM’s responses to all substantive comments.

A land planning-level decision is broad in scope. For this reason, analysis of land use plan

alternatives in typically broad and qualitative rather than quantitative or focused on site-specific actions. The baseline data provides the necessary basis to make informed and land use plan-level decisions. The effectiveness of these decisions on changes GRSB populations will be evaluation based on criteria in the monitoring plan see Appendix C of the Bighorn Basin PRMP/FEIS.

On page 4-552 of the Proposed Plan/ Final EIS the GRSB Key Habitat Areas and GRSB Priority Habitat provides analysis of different conservation measures to reduce or eliminate threats, including habitat disturbance, lek buffers, disturbance, and habitat degradations.

The Bighorn Basin PRMP/FEIS provides an estimate of potential surface disturbance (see Appendix T) sufficient for making a reasoned choice among the alternatives, and employs the assumption that such disturbance would affect vegetation communities proportionally to their current extent, this would include sagebrush. However, the exact location of projects and their effects on various habitat types will not be known until projects are proposed.

As the decisions under consideration by the BLM are programmatic in nature and would not result in on- the-ground planning decision or actions, the scope of analysis was conducted at a regional, programmatic level (e.g., the BLM is not approving an Application for Permit to start Drilling), the scope of the was conducted at the programmatic level. The analysis focuses on the direct, indirect, and cumulative impacts to GRSB habitat, which includes both summer and winter habitat, which could potentially result from on the ground changes. This analysis identifies impacts that may result in some level of change to the resources, regardless of whether that change is beneficial or adverse.

The FEIS is not required to provide analysis supporting USFWS's conclusion. The BLM NEPA handbook also directs the BLM to "use the best available science to support NEPA analyses, and give greater consideration to peer-reviewed science and methodology over that which is not peer-reviewed" (BLM Handbook H-1790-1, p 55. Under the BLM's guidelines for implementing the Information Quality Act, the BLM applies the principles of using the "best available" data in making its decisions (BLM Information Quality Act Guidelines, February 9, 2012). Chapter 1 pages 1-8 and 1-9 in the FEIS provides additional clarification use of Core Areas. .

A National Technical Team (NTT) was formed as an independent, science-based team to ensure that the best information about how to manage the GRSB is reviewed, evaluated, and provided to the BLM and the Forest Service in the planning process. A baseline environmental report, titled Summary of Science, Activities, Programs, and Policies That Influence the Rangeland Conservation of GRSB (*Centrocercus urophasianus*) (referred to as the BER), was released on June 3, 2013, by the U.S. Geological Survey. The peer-reviewed report summarizes the current scientific understanding about the various impacts to greater sage-grouse populations and habitats and addresses the location, magnitude, and extent of each threat. The data for this report were gathered from the BLM, Forest Service, and other sources and were the "best available" at the range-wide scale at the time collected. The report provides a framework for considering potential implications and management options, and demonstrates a regional context and perspective needed for local planning and decision-making.

## *Impacts – Air Quality*

**Issue Number:** PP-WY-BIGHORN-GRSG-15-08-7

**Organization:** WildEarth Guardians

**Protestor:** Erik Molvar

**Issue Excerpt Text:** This failing has been incorporated by the BLM in its plan revision by specifying that noise limits will be measured within 0.6 mile of the lek instead of at the periphery of occupied seasonal habitat. In the Wyoming Basins Ecoregional Assessment, the authors pointed out, “Any drilling <6.5 km [approximately 4 miles] from a sage-grouse lek could have indirect (noise disturbance) or direct (mortality) negative effects on sage-grouse populations” (WBEA at 131). The proposed Bighorn Basin RMP provides, “The BLM would

evaluate the potential for limitation of new noise sources on a case-by-case basis as appropriate” (FEIS at 2-24). It is completely inappropriate to alter allowable noise thresholds on a case-by-case basis, as the science does not show that impacts to GRSG vary on a case-by-case basis. BLM proposes a limit of 10 dBA above ambient as measured at the lek, with no ambient noise level defined in the plan. FEIS at 2-24. The ambient level needs to be set at 15 dBA and maximum noise allowed should not exceed 25 dBA to prevent lek declines due to noise. In addition, by setting the noise level at the lek, BLM fails to adequately protect nesting habitats, wintering habitats, and brood-rearing habitats from significant noise impacts.

### **Summary:**

The Bighorn Basin PRMP/FEIS violated NEPA by failing to evaluate the effects of the Required Design Feature of setting the noise level at the edge of the lek perimeter instead of the perimeter of the occupied seasonal habitat and setting the limit at 10dB instead of 15dB, thus failing to adequately protect nesting habitats, wintering habitats, and brood-rearing habitats from significant noise impacts.

### **Response:**

The Council on Environmental Quality’s (CEQ) regulations implementing NEPA require that agencies use “high quality information” (40 CFR 1500.1(b)). NEPA regulations require the BLM to “insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements” (40 CFR 1502.24).

The BLM NEPA Handbook also directs the BLM to “use the best available science to support NEPA analyses, and give greater consideration to peer-reviewed science and methodology over that which is not peer-reviewed” (BLM Handbook H-1790-1, p. 55). Under the BLM’s guidelines for implementing the Information Quality Act, the BLM applies the principle of using the “best available” data in making its decisions (BLM Information Quality Act Guidelines, February 9, 2012).

The Bighorn Basin PRMP/FEIS prohibits surface-disturbing and disruptive activities within 0.6-mile of occupied GRSG leks inside PHMAs and within a ¼ mile of occupied leks outside of PHMAs. The PRMP/FEIS also applies an overall (cumulative) limit on the allowable density of disturbance to 5% of a proposed project’s Wyoming Density and Disturbance Calculation Tool (DDCT) analysis area. The PRMP/FEIS applies timing limitations (TLS) to prohibit or restrict

surface-disturbing and/or disruptive activities in and around occupied leks and early brood rearing and nesting habitat from March 15 to June 30. This management could prevent stress from noise and human presence during breeding, nesting, and early brood-rearing. These TLSs and their impacts would be similar to those under Alternative B, though they would be applied over a shorter period of time. Overall, resource use and activity restrictions under the PRMP/FEIS would minimize impacts to greater sage-grouse in PHMAs more than alternatives A and C, but less than Alternative B. Outside of PHMAs, restrictions on resource uses and activities would result in similar beneficial impacts as under Alternative B, although to a lesser extent due to the decreased size of protective lek buffers (PRMP/FEIS 4-335).

In Chapter 7, Cumulative Impacts (GRSG) the issue of a 0.6-mile no surface occupancy (NSO) buffer around occupied leks and restrictions on activities in breeding and winter concentration habitat is discussed on NSO buffer is again discussed under the Montana Executive Order effective in 2014. In Section 7.1.6.1 Oil and Gas, the FEIS discusses buffers and the studies relating to the conclusions. (FEIS, page 7-13). The effects of noise on GRSG have been quantified in several studies. Lyon and Anderson (2003) reported that oil and gas development influenced the rate of nest initiation of GRSG in excess of approximately 2 miles of construction activities. GRSG numbers on leks within approximately 1 mile of natural gas compressor stations in Campbell County, Wyoming, were consistently lower than numbers on leks unaffected by this noise disturbance (Braun et al. 2002). Holloran and Anderson (2005) reported that lek activity decreased downwind of drilling activities, suggesting that noise caused measurable impacts. In addition to activities directly associated with oil and gas development, road traffic also generates noise. Knick et al. (2003) indicated that there were no active GRSG leks within approximately 1 mile of Interstate 80 across southern Wyoming; only 9 leks were known to occur between approximately 1 and 2.5 miles of Interstate 80. (FEIS page, 7-14) The BLM would work with proponents to limit project-related noise where it would be expected to reduce functionality of habitats that support PHMA populations. The BLM would evaluate the potential or limitation of new noise sources on a case-by-case basis as appropriate. The BLM's near-term goal would be to limit noise sources that would be expected to negatively impact PHMA GRSG populations and to continue to support the establishment of ambient baseline noise levels for occupied PHMA leks. As additional research and information emerges, specific new limitations appropriate to the type of projects being considered would be evaluated and appropriate limitations would be implemented to minimize potential for noise impacts on sage-grouse PHMA population behavioral cycles. As new research is completed, new specific limitations would be coordinated with the WGFD and partners.

The Bighorn Basin PRMP/FEIS includes a bibliography and reference section in Volume 3 of 4 beginning on page 6-1, which lists information considered by the BLM in preparation of the Bighorn Basin PRMP/FEIS.

The BLM has reviewed the suggested Wyoming Basin Rapid Ecoregional Assessment to determine if the information is substantially different than the information considered and cited in the Bighorn Basin PRMP/FEIS. The Wyoming Basin Rapid Ecoregional Assessment does not provide additional information that would result in effects outside the range of effects already discussed in the Bighorn Basin PRMP/FEIS.

The BLM relied on high quality information and the best available data and information in preparation of the Bighorn Basin Revision/PEIS and is in compliance with NEPA.

### *Impacts – Oil and Gas*

**Issue Number:** PP-WY-BIGHORN-GRSG-15-04-22

**Organization:** Devon Energy Corporation

**Protestor:** Dru-Bower Moore

**Issue Excerpt Text:** The BLM’s belief that any oil and gas wells would be drilled in big game winter range given such overly restrictive limitations on future production is specious. The BLM would effectively eliminate all oil and gas development in identified crucial range. Further, the BLM has not analyzed or apparently even considered the damage that could be done to oil and gas wells and reservoirs if they are shut-in on an annual basis. Nor has the BLM analyzed the very real threat that federal minerals would be effectively drained by offsetting wells on State of Wyoming and private lands if federal wells are annually shut-in.

**Issue Number:** PP-WY-BIGHORN-GRSG-15-12-37

**Organization:** Petroleum Association of Wyoming / Western Energy Alliance

**Protestor:** Esther Wagner

**Issue Excerpt Text:** The BLM’s belief that any oil and gas wells would be drilled in big game winter range given such overly restrictive limitations on future production is specious. The BLM would effectively eliminate all oil and gas development in identified crucial range. Further, the BLM has not analyzed or apparently even considered the damage that could be done to oil and gas wells and reservoirs if they are shut-in on an annual basis. Nor has the BLM analyzed the very real threat that federal minerals would be effectively drained by offsetting wells on State of Wyoming and private lands if federal wells are annually shut-in.

### **Summary:**

The Bighorn Basin PRMP/FEIS fails to analyze the impacts to oil and gas development as a result of annual shut-ins associated with seasonal closures.

### **Response:**

The Bighorn Basin PRMP/FEIS assesses and discloses the environmental consequences of the Proposed Plan and alternatives in Chapter 4. As required by 40 CFR § 1502.16, the following was provided in the PRMP/FEIS:

- A discussion of the environmental impacts of the alternatives including the proposed action;
- any adverse environmental effects which cannot be avoided should the proposal be implemented;
- the relationship between short-term uses of man’s environment and the maintenance and enhancement of long-term productivity; and
- any irreversible or irretrievable commitments of resources which would be involved in the proposal should it be implemented.

The PRMP/FEIS presented the decision-maker with sufficiently detailed information to aid in determining whether to proceed with the Proposed Plan or make a reasoned choice among the other alternatives in a manner such that the public would have an understanding of the environmental consequences associated with the alternatives. Land use plan-level analyses are typically broad and qualitative rather than quantitative or focused on site-specific actions and, therefore, a more quantified or detailed and specific analysis would be required only if the scope of the decision was a discrete or specific action.

The BLM will conduct subsequent NEPA analyses for site-specific project and implementation-level actions, such as for oil and gas field development. These activity plan-level analyses will tier to the RMP analysis and expand the environmental analysis when more specific information is known. In addition, as required by NEPA, the public will be offered the opportunity to participate in the NEPA process for these specific implementation actions.

### *Impacts – Recreation*

**Issue Number:** PP-WY-BIGHORN-GRSG-15-03-3

**Organization:** Local Government Cooperating Agencies

**Protestor:** Various

**Issue Excerpt Text:** The BLM failed to incorporate appropriate mandated social science activities during the initial planning steps, in particular the required economics workshop, and this has resulted in an PRMP/FEIS that fails to address: (1) critical social and economic issues, (2) social and economic opportunities and constraints that should have been included during alternative development, (3) mitigation opportunities to enhance alternatives' positive effects and minimize their negative effects, (4) potential social and economic factors to help select the preferred alternative and (5) benchmarks for communities in the planning area.

**Issue Number:** PP-WY-BIGHORN-GRSG-15-03-4

**Organization:** Local Government Cooperating Agencies

**Protestor:** Various

**Issue Excerpt Text:** The BLM failed to meet objectivity guidelines in their analysis. According to Bureau of Land Management:

Information Quality Guidelines (2012), “Objectivity is defined according to two distinct elements: presence and substance. Objectivity includes whether disseminated information is being presented in an accurate, clear, complete, and unbiased manner. BLM is also committed to ensure accurate, reliable, and unbiased information. Much of the influential information BLM disseminates is and will be subject to public review and comment prior to its final publication.” The data quality shortcomings resulted in an impact analysis indicating minimal impact for the Preferred Alternative. For example, assumptions made by the BLM resulted in the conclusion that impacts to recreation are constant across all alternatives, yet certain types of recreational use (OHV use in particular) are expected to increase at a higher rate than other uses

**Issue Number:** PP-WY-BIGHORN-GRSG-15-03-5

**Organization:** Local Government Cooperating Agencies

**Protestor:** Various

**Issue Excerpt Text:** This is qualified by the statement that “those cities with a higher concentration of oil and gas support activities businesses, as well as housing centers for oil and gas workers, could



experience greater impacts.” While this may be true, references or analysis are not provided to support the conclusion.

**Issue Number:** PP-WY-BIGHORN-GRSG-15-03-5

**Organization:** Local Government Cooperating Agencies

**Protestor:** Various

**Issue Excerpt Text:** This is qualified by the statement that “those cities with a higher concentration of oil and gas support activities businesses, as well as housing centers for oil and gas workers, could experience greater impacts.” While this may be true, references or analysis are not provided to support the conclusion.

**Issue Number:** PP-WY-BIGHORN-GRSG-15-03-6

**Organization:** Local Government Cooperating Agencies

**Protestor:** Various

**Issue Excerpt Text:** Appendix D of the Land Use Planning Handbook provides guidance to assure that the RMP satisfies socioeconomic requirements. According to the handbook, a complete and accurate socioeconomic analysis should result in relevant indicators to monitor during the life of the plan and a mitigation plan should indicate adverse impacts to the communities of the planning area. Relevant indicators should reflect the desired conditions as developed during the scoping process. These actions have not occurred during the planning process. Geographic disbursement of impacts across communities of the planning area should be included in the analysis. The analysis should inform the reader how many of these cities are within the planning area and where they are located. The geographic disbursement of other impacts should be identified in order

to assist with the indicator development and monitoring processes.

**Issue Number:** PP-WY-BIGHORN-GRSG-15-04-23

**Organization:** Devon Energy Corporation

**Protestor:** Dru-Bower Moore

**Issue Excerpt Text:** Finally, the BLM has not concerned the very real human and environmental safety issues posed by limiting access to existing wells. The BLM must prepare significant additional analysis in order to disclose the significant adverse impacts that would be associated with the closure of oil and gas development on a seasonal basis, including the potential loss of federal reserves and royalties. It also appears the BLM failed to consider the significant detrimental impact to the local economy that the seasonal prohibition on oil and gas operations would have upon the local economy. By precluding production during several months of the year, the BLM would force operators to significantly reduce their workforces on an annual basis. The management action would create a seasonal boom and bust cycle with routine maintenance workers and pumpers being laid off annually. The inconsistent nature of the work would almost certainly reduce the number of local employees lessees are able to hire, which would restrict or eliminate the long-term beneficial impacts of the oil and gas development to the local economy. The BLM’s socio-economic analysis does not account for this cycle.

**Issue Number:** PP-WY-BIGHORN-GRSG-15-12-38

**Organization:** Petroleum Association of Wyoming / Western Energy Alliance

**Protestor:** Esther Wagner

**Issue Excerpt Text:** Finally, the BLM has not concerned the very real human and environmental safety issues posed by limiting access to existing wells. The BLM

must prepare significant additional analysis in order to disclose the significant adverse impacts that would be associated with the closure of oil and gas development on a seasonal basis, including the potential loss of federal reserves and royalties.

It also appears BLM failed to consider the significant detrimental impact to the local economy the seasonal prohibition on oil and gas operations would have upon the local economy. By precluding production during several months of the year, BLM would

force operators to significantly reduce their workforces on an annual basis. The management action would create a seasonal boom and bust cycle with routine maintenance workers and pumpers being laid off annually. The inconsistent nature of the work would almost certainly reduce the number of local employees lessees are able to hire, which would restrict or eliminate the long-term beneficial impacts of the oil and gas development to the local economy. BLM's socio-economic analysis does not account for this cycle.

### **Summary:**

The Bighorn Basin PRMP/FEIS violated NEPA by:

- failing to meet objectivity guidelines in the analysis in accordance with BLM's Information Quality Guidelines (2012);
- failing to incorporate appropriate mandated social science activities during the initial planning steps;
- failing to hold the required economics workshop;
- failing to include references or analysis to support conclusion;
- failing to include geographic disbursement of impacts across communities of the planning area addressing impacts associated with the closure of oil and gas development on a seasonal basis, including the potential loss of federal reserves and royalties;
- failing to consider the impact to the local economy of seasonal prohibition on oil and gas;
- incorrectly assuming impacts to recreation are constant across all alternatives.

### **Response:**

NEPA directs that data and analyses in an EIS must be commensurate with the importance of the impact (40 CFR 1502.15), and that NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail (40 CFR 1500.1(b)). The BLM is required to take a "hard look" at potential environmental impacts of adopting the Bighorn Basin PRMP/FEIS.

The level of detail of the NEPA analysis must be sufficient to support reasoned conclusions by comparing the amount and the degree of change (impact) caused by the proposed action and alternatives (BLM Handbook H-1790-1, Section 6.8.1.2). The BLM need not speculate about all conceivable impacts, but it must evaluate the reasonably foreseeable significant effects of the proposed action.

A land use planning-level decision is broad in scope. For this reason, analysis of land use plan alternatives is typically broad and qualitative rather than quantitative or focused on site-specific actions. The baseline data provides the necessary basis to make informed land use plan-level decisions.

As the decisions under consideration by the BLM are programmatic in nature and would not result in on-the-ground planning decision or actions (e.g., the BLM is not approving an Application for Permit to Drill), the scope of the analysis was conducted at a regional, programmatic level. The analysis focuses on the direct, indirect, and cumulative impacts that could potentially result from on-the-ground changes. This analysis identifies impacts that may result in some level of change to the resources, regardless of whether that change is beneficial or adverse.

The Bighorn Basin PRMP/FEIS discusses the socioeconomics of the planning area in Chapter 4, Section 4.8, page 4-606-634. The Bighorn Basin PRMP/FEIS describes the methods and tools used to evaluate the socioeconomic resources for the planning area. The Impact Analysis for Planning model (IMPLAN)(FEIS, Appendix Q) was used to estimate socioeconomic impacts resulting from BLM management actions under the alternatives. IMPLAN is a regional economic model that provides a mathematical accounting of the flow of money, goods, and services through a region's economy. The analysis of impacts on social conditions focuses on the effects of BLM-authorized actions. It is important to note that many other events outside of the BLM's control may alter economic and social trends. For instance, oil and gas prices may change as a result of an expansion or contraction of world or national economic activity, and this, in turn, may affect the pace of development or the quantity of development. Similarly, state and local laws regulating the subdivision of land may alter land ownership and development patterns, which may in turn affect open space and physical landscapes. Minimal or no changes to social conditions resulting from BLM actions does not imply that no change could occur, as other forces may drive changes in economic and social trends. (Bighorn Basin PRMP/FEIS Volume II, Chapter 4, p. 4-606-634)

By using IMPLAN, the Bighorn Basin PRMP/FEIS complied with Information Quality Guidelines (2012), considered social science activities, effects to the local economy from oil and gas development in the planning area, and recreational uses in the planning area. The resulting estimates from the IMPLAN model, by alternative, can be found in the Economic Conditions section in Chapter 4. The FEIS used the best available references and resources to support conclusions. References for the analysis are found in Volume III, Chapter 6 – References.

A socioeconomics workshop was held on October 15, 2008, and was structured to cover the data sources and data elements that would be used for the Bighorn Basin RMP. In addition to covering historical data, the workshop included the analysis that was going to be used to estimate the impacts by alternative. The workshop also include a lengthy discussion centered on market and non-market values; the goal of which was to point out that non-market analysis was beyond the scope of regional economic modeling. These workshops were provided throughout the state, and tailored to the area being studied.

The BLM complied with NEPA's requirement to analyze the environmental consequences/impacts to socioeconomics in developing the Bighorn Basin PRMP/FEIS.

## *Impacts – Water*

**Issue Number:** PP-WY-BIGHORN-GRSG-15-14-16

**Organization:** Western Watersheds Project

**Protestor:** Travis Bruner

**Issue Excerpt Text:** For Wyoming, a stunning 58% of the riparian areas are still failing to meet even the very low bar of PFC. Table 3-26 displays the Cody and Worland Field Offices part in this failure with 60% of the stream miles failing and a stunning 92% of the wetlands failing this very low bar. As TR 1737- 15 clearly states on page 16, PFC is merely the minimum physical functioning to withstand a 20 year

flood event and is below the condition necessary to provide for watershed, wildlife and fisheries values. Yet despite this longstanding failure, the BLM maintains the same failed RMP direction regarding riparian management.

So at least 60% of the stream miles and 92% of the wetland acres on BLM lands in the assessment area, which provide critical brood rearing habitat, are in severely degraded condition and the FEIS is completely silent on this and the PLUP fails to provide any meaningful management requirements to correct this longstanding failure.

### **Summary:**

The Bighorn Basin PRMP/FEIS violated NEPA by failing to consider or take a “hard look” at the current RMP direction which is failing to make improvements for riparian management including watershed, wildlife, and fisheries values.

### **Response:**

NEPA directs that data and analyses in an EIS must be commensurate with the importance of the impact (40 CFR 1502.15), and that NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail (40 CFR 1500.1(b)). The BLM is required to take a “hard look” at potential environmental impacts of adopting the Bighorn Basin PRMP/FEIS.

The level of detail of the NEPA analysis must be sufficient to support reasoned conclusions by comparing the amount and the degree of change (impact) caused by the proposed action and alternatives (BLM Handbook H-1790-1, Section 6.8.1.2). The BLM need not speculate about all conceivable impacts, but it must evaluate the reasonably foreseeable significant effects of the proposed action.

A land use planning-level decision is broad in scope. For this reason, analysis of land use plan alternatives is typically broad and qualitative rather than quantitative or focused on site-specific actions. The baseline data provides the necessary basis to make informed land use plan-level decisions.

As the decisions under consideration by the BLM are programmatic in nature and would not result in on-the-ground planning decision or actions (e.g., the BLM is not approving an Application for Permit to Drill), the scope of the analysis was conducted at a regional, programmatic level. The analysis focuses on the direct, indirect, and cumulative impacts that could potentially result from on-the-ground changes. This analysis identifies impacts that may

result in some level of change to the resources, regardless of whether that change is beneficial or adverse.

In Chapter 3, Riparian/Wetland inventories is discussed. The riparian/wetland areas in the Planning Area are inventoried to estimate their functional status using PFC assessment methodologies developed by the BLM, USFS, NRCS, and others (BLM 1998b; BLM 1999). These methodologies employ an interdisciplinary team that inspects and analyzes the attributes and processes associated with a riparian/wetland area's hydrology, vegetation, and soils to estimate its relative health. In the Planning Area, inventoried riparian/wetland areas include approximately 1,617 acres of lentic and 1,205 miles of lotic riparian/wetlands (BLM 2009). Table 3-26 on page 3-96 of the FEIS provides the results of the riparian/wetland PFC inventories for the Planning Area (Chapter 3, page 3-95). PFC assessments seem to indicate that many riparian/wetland areas in the Planning Area have improved over the last 15 to 20 years in response to implemented changes in grazing and other management actions. During this time, livestock grazing schedules have been modified to reduce or eliminate growing and/or hot-season use and increase dormant and cool-season use and/or rest periods to provide plants with recovery time. The Bighorn Basin PRMP/FEIS acknowledges there are challenges with invasive plants, human activities and precipitation. (Bighorn Basin PRMP/FEIS, page 3-96).

In Chapter 4, Section 4.4.3 Vegetation – Riparian/Wetland Resources, page 4-180 to 4-194, the Bighorn Basin PRMP/FEIS discusses impacts to riparian and wetland resources for each alternative. As discussed in this Chapter, all riparian areas are evaluated during application of the Standards for Healthy Rangelands and Guidelines for Livestock Grazing Management for the Public Lands Administered by the BLM in the State of Wyoming (FEIS, Appendix N) and managed toward proper functioning condition (PFC). Management toward DPC is assumed to exceed the requirements of managing toward desired future condition (DFC), which is assumed to exceed the requirements of managing toward PFC. The BLM generally avoids, whenever possible, impacts to riparian/wetland areas under all alternatives and minimizes impacts from projects or resource uses that involve riparian areas through applying BMPs. In addition, the BLM manages lotic and lentic riparian/wetland areas to meet PFC and the Wyoming Standards for Healthy Rangelands. (Chapter 4, Section 4.4.3). Impacts to riparian and wetland areas and condition of those areas was considered and discussed and throughout Chapter 4 in each of the specific resource sections (ie., Water Quality, Fish and Wildlife).

The Bighorn Basin PRMP/FEIS includes a bibliography and reference section in Volume 3 of 4 beginning on page 6-1, which lists information and research regarding riparian/wetland resources considered by the BLM in preparation of the Bighorn Basin planning effort.

The BLM complied with NEPA's requirement to consider, analyze and take a hard look at the environmental consequences/impacts to riparian resources in the Bighorn Basin planning effort.

### *Impacts – Grazing*

**Issue Number:** PP-WY-BIGHORN-GRSG-15-08-13

**Organization:** WildEarth Guardians

**Protestor:** Erik Molvar

**Issue Excerpt Text:** In the proposed plan, the BLM erroneously prescribes livestock grazing as a means to reduce or control

cheatgrass infestations. This method fails NEPA's scientific integrity and 'hard look' requirements, because livestock grazing

cannot be effective at controlling cheatgrass, and indeed exacerbates the problem.

### **Summary:**

The Bighorn Basin PRMP/FEIS violates NEPA because it does not provide sufficient analysis of the effects of livestock grazing on cheatgrass.

### **Response:**

The Bighorn Basin PRMP/FEIS fully assesses and discloses the environmental consequences of livestock grazing on upland plant communities and cheatgrass (and other invasive species) in Chapter 4, Section 4.4.2, Vegetation – Grassland and Shrubland Communities (p. 4-163 to 4-180) and Section 4.4.4, Invasive Species and Pest Management (p. 4-195 to 4-212). Specifically, the Bighorn Basin PRMP/FEIS analyzes the effects of livestock grazing on cheatgrass, at pages 4-166, and 4-196 through 4-198.

As required by 40 CFR § 1502.16, a discussion of “the environmental impacts of the alternatives including the proposed action, any adverse environmental effects which cannot be avoided should the proposal be implemented, the relationship between short-term uses of man’s environment and the maintenance and enhancement of long-term productivity, and any irreversible or irretrievable commitments of resources which would be involved in the proposal should it be implemented” was provided.

The Bighorn Basin PRMP/FEIS presented the decision maker with sufficiently detailed information to aid in determining whether to proceed with the Proposed Plan or make a reasoned choice among the other alternatives in a manner such that the public would have an understanding of the environmental consequences associated with alternatives. Land use plan-level analyses are typically broad and qualitative rather than quantitative or focused on site-specific actions, and therefore, a more quantified or detailed and specific analysis would be required only if the scope of the decision was a discrete or specific action.

With regard to the protest statement that, “In the proposed plan, the BLM erroneously prescribes livestock grazing as a means to reduce or control cheatgrass infestations. This method fails NEPA’s scientific integrity and ‘hard look’ requirements, because livestock grazing cannot be effective at controlling cheatgrass, and indeed exacerbates the problem.”, the protester simply disagrees with the science supporting the BLM’s conclusion that “Livestock grazing management in accordance with guidelines associated with the Standards for Healthy Rangelands and Guidelines for Livestock Grazing Management for the Public Lands Administered by the BLM in the State of Wyoming (Appendix N) may result in beneficial impacts by improving rangeland health and decreasing the potential for the spread and establishment of invasive species”. Studies have shown that proper livestock grazing management can increase a plant community’s resistance to cheatgrass invasion after a disturbance such as wildland fire and effectively control other invasive species (Hall and Bryant 1995, Stohlgren et al. 1999, Davies et al. 2009). In addition, livestock grazing in sagebrush communities can increase plant species richness and diversity (Manier and Hobbs 2007), decreasing vulnerability to invasive species spread”. (PRMP/FEIS, p. 4-198).

The BLM has adequately analyzed and disclosed the effects of livestock grazing on native plant communities and invasive species, including cheatgrass.

### *Impacts - Other*

**Issue Number:** PP-WY-BIGHORN-GRSG-15-08-10

**Organization:** WildEarth Guardians

**Protestor:** Erik Molvar

**Issue Excerpt Text:** The BLM has failed to take the legally required ‘hard look’ at effectiveness of proposed mitigation measures because its impact analysis ignores the primacy of cheatgrass invasion in determining patterns of rangeland fire.

**Issue Number:** PP-WY-BIGHORN-GRSG-15-19-2

#### **Summary:**

The Bighorn Basin PRMP/FEIS violated NEPA by failing to take a ‘hard look’ at the effectiveness of proposed mitigation measures; the impact analysis of cheatgrass invasion in determining patterns of rangeland fire; and the impacts of removing guy wires.

#### **Response:**

NEPA directs that data and analyses in an EIS must be commensurate with the importance of the impact (40 CFR 1502.15), and that NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail (40 CFR 1500.1(b)). The BLM is required to take a “hard look” at potential environmental impacts of adopting the Bighorn Basin PRMP/FEIS.

The level of detail of the NEPA analysis must be sufficient to support reasoned conclusions by comparing the amount and the degree of change (impact) caused by the proposed action and alternatives (BLM Handbook H-1790-1, Section 6.8.1.2). The BLM need not speculate about all conceivable impacts, but it must evaluate the reasonably foreseeable significant effects of the proposed action.

A land use planning-level decision is broad in scope. For this reason, analysis of land use plan alternatives is typically broad and qualitative rather than quantitative or focused on site-specific actions. The baseline data provides the necessary basis to make informed land use plan-level decisions.

As the decisions under consideration by the BLM are programmatic in nature and would not result in on-the-ground planning decision or actions (e.g., the BLM is not approving an Application for Permit to Drill), the scope of the analysis was conducted at a regional,

**Organization:** Avian Power Line Interaction Committee

**Protestor:** Mike Best

**Issue Excerpt Text:** The impacts of removing guy wires have not been analyzed in the LUPA FEIS. Guy wires cannot simply be removed without altering the stability, integrity, and safety of the line. The removal of guy wires would result in the need for taller, more robust structures, potential replacement of structures, and potentially more surface disturbance.

programmatic level. The analysis focuses on the direct, indirect, and cumulative impacts that could potentially result from on-the-ground changes. This analysis identifies impacts that may result in some level of change to the resources, regardless of whether that change is beneficial or adverse.

The Bighorn Basin PRMP/FEIS discusses the challenges associated with fire and cheatgrass in Chapter 3 “The challenges of fire and fuels management center on preventing wildfires and adequately addressing stabilization and rehabilitation efforts after wildfires. Fire size and frequency is likely to increase, due primarily to the spread of cheatgrass, but also due to mixed conifer forests affected by bark beetles and blister rust. The spread of cheatgrass, and the associated increase in wildfires, threatens GRSG and other sagebrush habitat-dependent species. Despite treatment efforts, cheatgrass has recently become more widespread and has extirpated native vegetation in some areas (BLM 2009a)” (p. 3-77) . In chapter 4 the potential adverse effects of prescribed fire on cheatgrass are acknowledged “The use of prescribed fire would result in long-term beneficial impacts to fire and fuels management by moving areas towards DPC, reducing fuel loading, and reducing the potential for future catastrophic fires. However, through the removal of existing vegetation and exposure of soil, prescribed fire may increase the potential for the establishment and spread of invasive species (such as cheatgrass) which may increase the incidence and spread of fire” (p. 4-135). Finally, the FEIS concludes in the effects to Vegetation section that “Proactive management under Alternative D [Proposed Alternative] would result in similar beneficial impacts as those under Alternative B [Conservation Alternative], but to a lesser degree. Under Alternative D, the BLM would manage to maintain large contiguous blocks of native plant communities, similar to Alternative B. However, Alternative D would manage to achieve or make progress toward the appropriate community phase for grassland and shrubland sites. Some areas under Alternative D would be managed for a higher plant community state or phase (based on state and transition models in ESDs) where site-specific management objectives determine that a higher plant community state or phase is desirable” (p. 4-176).

Removal of guy wires from existing infrastructure was not analyzed in the FEIS, however upon renewal of existing authorizations or new proposed facilities, new site specific NEPA analysis would be conducted and the placement of guy wires would be assessed at that time.

The Bighorn Basin PRMP/FEIS includes a bibliography and reference section in Volume 3 of 4 beginning on page 6-1, which lists information and research considered by the BLM in preparation of the Bighorn Basin PRMP/FEIS.

The BLM complied with NEPA’s requirement to consider, analyze and take a hard look at the environmental consequences/impacts to riparian resources in the Bighorn Basin PRMP/FEIS.

### *Impacts – Lands with Wilderness Characteristics*

**Issue Number:** PP-WY-BIGHORN-GRSG-15-01-2

**Organization:** Wyoming Wilderness Association

**Protestor:** Kyle Wilson



**Issue Excerpt Text:** WWA’s inventory submissions meet the minimum standard for further review. However, the BLM has yet to evaluate the new information, document their findings, make the findings available to the public, and retain a record of the evaluation and the findings as evidence of the BLM’s consideration. Without these steps, the BLM does not have the relevant information to adequately analyze the impacts of the amendment alternatives. NEPA requires an adequate analysis of this information, and the NEPA documents must be “high quality”. Additionally, “accurate scientific analysis” is also necessary for successfully carrying out NEPA procedures. (40 C.F.R. 1500.1(b)). An analysis that is not based on the most current information possible does not demonstrate “high quality” information or “accurate scientific analysis”. If the BLM is basing their analysis on older information, this does not constitute “high quality” information. This is especially relevant given that the BLM has had adequate indication, provided by WWA’s inventory submission, that there is new information and that resource conditions may have changed. Additionally, BLM Manual 6310 recognizes that conditions related to wilderness characteristics can change over time (BLM Manual 6310 at 2). In order to meet the procedural requirements of NEPA and BLM Manual 6310, the BLM should ensure that it has evaluated the new

citizen inventory information, documented their findings, made the findings available to the public, and retained a record of the evaluation and the findings as evidence of the BLM’s consideration before the release of the Record of Decision (ROD).

**Issue Number:** PP-WY-BIGHORN-GRSG-15-01-9

**Organization:** Wyoming Wilderness Association

**Protestor:** Kyle Wilson

**Issue Excerpt Text:** While the PRMP states that other designations would, by extension, offer benefits to the protection wilderness character, this is not the case. For example, development is allowed under CSU, Sage Grouse Core, and in some ACECs. Such development would immediately impact the naturalness of an Lands with Wilderness Characteristics unit and thus disqualify it from Lands with Wilderness Characteristics consideration. Additionally, allowing mineral leasing to occur with a NSO stipulation increases the likelihood that development will occur near the Lands with Wilderness Characteristics unit. Correspondingly, this decision increases the likelihood that outside sights and sounds will detract from the wilderness characteristics of the unit. BLM Manual 6310. Accordingly, Table 4-31 represents an inaccurate analysis, which is in violation of NEPA.

### **Summary:**

The BLM failed to document that it has considered citizen inventory information for Lands with Wilderness Character reports, and erroneously relied on the conclusion that some designations (e.g., ACECs, SFAs) would have benefits to LWCs.

### **Response:**

Section 201(a) of FLPMA requires that the BLM “prepare and maintain on a continuing basis an inventory of all public lands and their resources and other values” and that “this inventory shall be kept current so as to reflect changes in conditions and to identify new and emerging resource

and other values.” Section 202(c)(4) of FLPMA requires that “in the development and revision of land use plans, the Secretary shall...rely, to the extent it is available, on the inventory of the public lands, their resources, and other values”. Also, the BLM’s wilderness characteristics inventory process does not require that the BLM must conduct a completely new inventory and disregard the inventory information that it already has for a particular area when preparing a land use plan (BLM Manual Section 6310.06.B)

The BLM relied on a current inventory of the resources of the public lands when preparing the Bighorn Basin PRMP/FEIS. The BLM described the inventory information it used for lands with wilderness characteristics in Section 3.6.6 and 4.6.6 of the Bighorn Basin PRMP/FEIS. Section 3.6.6 documents in detail how the Worland and Cody Field Offices solicited, received, and updated their inventories based on multiple engagements with the public regarding lands with wilderness characteristics. As stated in Chapter 3: “Consistent with WO IM 2013-106, these comments were integrated into the wilderness characteristics inventories and, as a result, some previously mapped lands with wilderness characteristics boundaries were adjusted, and other areas previously believed to possess wilderness characteristics were dropped from the inventory after being found to lack those characteristics.” As required by FLPMA, the BLM relied on its current inventory of the public lands, to the extent it was available, in developing the Bighorn Basin PRMP/FEIS.

Additionally, the Bighorn Basin PRMP/FEIS suggests in Sections 3.6.6 and 4.6.6 that conservation measures such as ACEC designations, as well as other management prescriptions may be beneficial to wilderness characteristics if their management increases resource restrictions or actions that protect or increase wilderness characteristics. Such statements are qualitative analysis of the effect of conservation designations and do not indicate a reliance on one kind of designation in the place of another.

### ***GRSG - General***

**Issue Number:** PP-WY-BIGHORN-GRSG-15-08-15

**Organization:** WildEarth Guardians

**Protestor:** Erik Molvar

**Issue Excerpt Text:** The BLM has not made a showing through its collective NEPA analyses that GRSG respond differently to the impacts of permitted activities in different ecological regions or Management Zones based on what is known based on the science, with the exception that post-grazing stubble height recommendations are 26 cm in the mixed-grass prairies of the Dakotas and eastern Montana and 18 cm across the remaining range of the GRSG based on scientific studies. Indeed, the science shows that

responses of GRSG to human-induced habitat alternations are remarkably similar across the species’ range. Given that the science does not differ significantly across the species’ range regarding the impacts of human activities on GRSG, does not find different thresholds at which human impacts become significant, and is highlighted by similar (or indeed, identical) conservation measures recommended by expert bodies reviewing the literature or in the peer-reviewed scientific literature itself, different approaches to GRSG conservation in different geographies are indicative of a failure to address the conservation needs of the species in one planning area or another. This geographic inconsistency reveals an arbitrary and capricious approach by federal

agencies to the conservation of this Sensitive Species, and the resulting plan amendment decisions are properly classified as demonstrating an abuse of agency discretion.

**Issue Number:** PP-WY-BIGHORN-GRSG-15-14-13

**Organization:** Western Watersheds Project

**Protestor:** Travis Bruner

**Issue Excerpt Text:** We protest the lack of consistent management parameters across the range of the species, or adequate explanations for variation where that exists.

The management specified in the PRMP/FEIS also differs from the management proposed on other BLM and FS lands throughout GRSG habitat. A crosscheck of range-wide plans reveals that habitat objectives are far from uniform. For example, in regard to grass height, utilization/cover requirements, and canopy cover, the plans have significant variation. Sage-grouse habitat needs, especially hiding cover, do not vary widely across its range, thus it is a failure on the part of the agencies not to provide consistent parameters or at minimum an explanation for the variation between plans.

**Issue Number:** PP-WY-BIGHORN-GRSG-15-15-2

**Organization:** Defenders of Wildlife

**Protestor:** Mark Salvo

**Issue Excerpt Text:** Most other proposed final sage-grouse plans adopt a three percent disturbance cap in priority Sage-grouse habitat and Sagebrush Focal Areas (where designated)...including the Oregon FEIS (2-18, Table 2-3, Action SSS 3; Action SSS 4); North Dakota FEIS(ES-11; 2-10, Objective SS-1.1); Nevada/Northeastern California FEIS (2-20; 2-21-2-22; Append. F,

exception.<); Idaho/Southwestern Montana FEIS (ES-16; 2-29, AD-1); Northwest Colorado FEIS (1- 39; 1-40; 1-41; 2-16; Append. H); and the South Dakota FEIS (ix, Table ES-2; 41). The five percent disturbance tap in Wyoming is not equivalent to three percent (or less) disturbance caps adopted elsewhere in Wyoming range...

Some claim that the five percent cap incorporated from the Wyoming state "core area" sage-grouse conservation strategy in federal sage-grouse plans in the state is equivalent to the three percent cap recommended in the NTI' report and other references (see, e.g., Wyoming FEIS: 4-339) because the Wyoming strategy also counts other types of disturbance against its cap, including temporary habitat loss from fire and vegetation removal (e.g., Wyoming DEIS: 2-118, Table 2-1, Action 115; 2-181, Table 2.5), that are not typically counted in the 3 percent cap. But this rationale is flawed.

**Issue Number:** PP-WY-BIGHORN-GRSG-15-15-4

**Organization:** Defenders of Wildlife

**Protestor:** Mark Salvo

**Issue Excerpt Text:** It is unclear what scientific reference supports a shorter 6-inch minimum average grass height in sage-grouse nesting and brood-rearing habitat. Other proposed final federal Sage-grouse plan would adopt taller average grass height in Sage-grouse nesting and brood-rearing habitat... For example, desired habitat conditions in sage-grouse habitat in the Oregon FEIS includes perennial grasses 2' 7 inches high on arid sites and 2' 9 inches on mesic sites in sage-grouse breeding habitat, including lekking, pre-nesting, nesting, and early brood-tearing habitats (citing Gregg et al. 1994; Hanf et al.1994; Crawford and Carver 2000; Hagen et al. 2007; Jon Bates, USDA ARS, pers. comm. 2/10/2015) (Oregon

FEIS: 2-41, Table 2-4). Desired habitat condition in the HiLine plan includes perennial grasses at 2' 7 inches high in sage-grouse breeding habitat (HiLine FEIS: 42, Table 2.4; 195, Table 2.27). The Proposed Plan in the Idaho FEIS includes desired conditions for sage-grouse habitat that include perennial grasses and forbs 2' 7 inches high during nesting and early brood-rearing season (Idaho FEIS: 2-20, Table 2-3).

While these plans also provide that desired conditions may not be met on every acre of sage-grouse habitat and that a specific site's ecological ability to meet desired conditions would be considered in determining whether objectives have been achieved (similar to the Bighorn Basin FEIS) (and recognizing that these additional disclaimers, by themselves, further complicate grazing management in sage-grouse range), the plans at least adopt science-based minimum standards for evaluating grazing effects and informing adaptive management of sage-grouse nesting and brood-rearing habitat.

**Issue Number:** PP-WY-BIGHORN-GRSG-15-15-5

**Organization:** Defenders of Wildlife

**Protestor:** Mark Salvo

**Issue Excerpt Text:** The Nevada/Northeastern California plan has adopted this desired condition for managing sage- grouse habitat (2-18, Table 2-2). This provision sets a science-based (Lockyear et al. in press) threshold that, when surpassed, indicates when grazing management adjustments should be applied.

**Issue Number:** PP-WY-BIGHORN-GRSG-15-15-6

**Organization:** Defenders of Wildlife

### **Summary:**

Protests identified inconsistencies among the various sub-regional GRSG land use plan amendments and revisions. These differences include how the LUPA addresses grazing management, surface disturbance caps, and GRSG habitat in general and may lead to arbitrary decisions in each sub-region.

**Protestor:** Mark Salvo

**Issue Excerpt Text:** The Bighorn Basin plan should follow the example set by the Nevada and Oregon plans ...

Although the Nevada plan also has its deficiencies concerning climate change management, it better addresses BLM's responsibility to consider climate change impacts in the current planning process. It identifies climate change as a planning issue and "fragmentation of [sage-grouse] habitat due to climate stress" as a threat to sage-grouse; it recognizes (at least some) existing direction on planning for climate change and acknowledges that climate adaptation can be addressed under existing resource programs; it describes the impacts of climate change on sage-grouse and sagebrush habitat, and the Proposed RMPA adopts objectives and associated actions to adaptively manage for climate change impacts on the species. The Proposed RMPA in the Oregon FEIS would designate a network of "climate change consideration areas," generally high elevation areas (typically above 5,000 feet) with limited habitat disturbance that the BLM has identified as likely to provide the best habitat for sage-grouse over the long term, according to climate change modeling. The climate change consideration areas total 2,222,588 acres and include priority habitat, general habitat, and even areas outside current sage- grouse range. The purpose of these areas is to benefit sage-grouse over the long term by identifying locations and options for management and restoration activities, including compensatory mitigation associated with local land use and development.

**Response:**

The BLM State Director has discretion to determine the planning area land use plan amendments and revisions (43 CFR 1610.1(b)). This planning area may cross administrative boundaries as appropriate to provide for meaningful management. With regard to the National GRSG Planning Strategy, the sub-regional land use planning boundaries were established in a manner that balanced both political (i.e. State) and biological (i.e. GRSG population) boundaries.

While the BLM has used a consistent method for developing alternatives and planning areas (for example all subregions followed Washington Office Instruction Memorandum 2012-044 for developing a range of alternatives), the specifics of each sub-region necessitated tailoring the range of alternatives to specifically address the threats within the sub-region, including locality and population differences (see also Section 2.3 of the Bighorn Basin PRMP/FEIS). Therefore, the differences between sub-regional plans are appropriate to address threats to GRSG at a regional level. There are some inconsistencies among the sub-regional plans as a means to address specific threats at a local and sub-regional level.

***GRSG - Density and Disturbance Cap***

**Issue Number:** PP-WY-BIGHORN-GRSG-15-14-12

**Organization:** Western Watersheds Project

**Protestor:** Travis Bruner

**Issue Excerpt Text:** The plan does not include grazing and grazing “improvements” as a surface disturbance subject to the disturbance cap. Rather, the plan appears to consider it a diffuse disturbance. But this disregards the surface-disturbing impacts of livestock concentration areas such as water developments, roads, and structural range improvements that disrupts vegetation communities, disturb and compact soils, and make reestablishment of native vegetation difficult in the surrounding area. By failing to include these concentration areas in the definition of surface disturbance, the agencies have also failed to prescribe management of grazing in accordance with avoidance and mitigation practices it assigns

to other uses. There are no RDF’s related to livestock grazing, the primary use of these public lands.

**Issue Number:** PP-WY-BIGHORN-GRSG-15-14-17

**Organization:** Western Watersheds Project

**Protestor:** Travis Bruner

**Issue Excerpt Text:** The plan fails to provide rationale or research as to the effects of the disturbance caps on GRSG populations. For instance, the BLM should have provided data from known areas such as the PAPA field or the Jonah field, provided the disturbance calculations and then provided population data and trends which as we have discussed in our DEIS comments have demonstrated massive declines and lost leks. This failure violates NEPA.

**Summary:**

The application of density and disturbance caps is insufficient to protect GRSG, as the calculation does not include disturbance associated with livestock grazing.

**Response:**

The density and disturbance caps were established per the NTT Report and science incorporated therein. Management actions were suggested in the NTT report to reduce disturbance associated with threats to GRSG habitat. In the NTT report, livestock grazing is identified as a diffuse disturbance, rather than a discrete disturbance. According to the NTT Report (BLM, 2011, p. 8):

“GRSG are extremely sensitive to discrete disturbance (Johnson et al. 2011, Naugle et al. 2011 a and b) although diffuse disturbance over broad spatial and temporal scales can have similar, but less visible effects.”

Though grazing is not identified as a discrete threat, there are provisions and management actions proposed in the NTT Report and incorporated in the Bighorn Basin PRMP/FEIS that address these impacts. The density and disturbance caps address other more discrete disturbances. Additionally, there are other management actions that more appropriately address the effects of livestock grazing to GRSG habitat proposed in the Bighorn Basin PRMP/FEIS (see Section 2.7, pages 2-148 through 2-159).

### ***GRSG - Required Design Features***

**Issue Number:** PP-WY-BIGHORN-GRSG-15-04-6

**Organization:** Devon Energy Corporation

**Protestor:** Dru-Bower Moore

**Issue Excerpt Text:** Devon is particularly concerned the BLM will attempt to impose the “Required Design Features” on all activities in the Planning Areas, including existing leases. Design features should be

site specific, and not one-size fits all. Thus, land use plans should not prescribe mandatory design features or best management practices. Notably, the BLM’s Land Use Planning Handbook specifies that RMPs are not normally used to make site-specific implementation decisions. See BLM Handbook H-1601-1, II.B.2.a, pg. 13 (Rel. 1-1693 3/11/05).

#### **Summary:**

Land use plans should not prescribe mandatory design features or best management practices. Notably, the BLM’s Land Use Planning Handbook specifies that RMPs are not normally used to make site-specific implementation decisions. See BLM Handbook H-1601-1, II.B.2.a, pg. 13.

#### **Response:**

BLM’s Land Use Planning Handbook (H-1601-1) says at II.B.2.a, pg. 13:

“The land use plan must set the stage for identifying site-specific resource use levels. Site-specific use levels are normally identified during subsequent implementation planning or the permit authorization process. At the land use plan level, it is important to identify reasonable development scenarios for allowable uses such as mineral leasing, locatable mineral development, recreation, timber harvest, utility corridors, and livestock grazing to enable the orderly implementation of future actions. These scenarios provide a context for the land use plan’s decisions and an analytical base for the NEPA analysis. The BLM may

also establish criteria in the land use plan to guide the identification of site-specific use levels for activities during plan implementation.”

The application of RDFs and BMPs in the Bighorn Basin PRMP/FEIS sets reasonable scenarios by which allowable uses may be permitted. These will also provide for site-specific analysis and activities upon implementation. Therefore, the BLM is within its authority to establish and prescribe management actions and stipulations within a Land Use Plan according to Handbook H-1601.

### ***GRSG - Mitigation***

**Issue Number:** PP-WY-BIGHORN-GRSG-15-14-19

**Organization:** Western Watersheds Project

**Protestor:** Travis Bruner

**Issue Excerpt Text** It appears that the BLM interpretation of the literature defining GRSG habitat is flawed. Even though this is a critical issue, the FEIS is entirely silent on how it came to its interpretations. Since they do not match with the standard interpretation of the literature, the BLM must explain how it came to a differing conclusion than the experts.

**Issue Number:** PP-WY-BIGHORN-GRSG-15-14-20

**Organization:** Western Watersheds Project

**Protestor:** Travis Bruner

**Issue Excerpt Text:** The BLM establishes “proper functioning condition” as the “desired condition” for riparian areas and

mesic meadows, yet the BLM ignores its own Technical Reference 1737-15 which clearly states that PFC is merely the minimum physical function to withstand significant flood events and PFC is below the level needed to provide wildlife habitat. See TR 1737-15 at 16.

**Issue Number:** PP-WY-BIGHORN-GRSG-15-14-8

**Organization:** Western Watersheds Project

**Protestor:** Travis Bruner

**Issue Excerpt Text:** Table 2-5 which provide the BLM’s review of the literature regarding GRSG habitat needs falsely concludes that the literature finds that the 6” grass height provides for nesting habitat. This is incorrect. The literature clearly determines that a minimum grass height of 7” is needed and as that is the minimum, higher than 7” improves recruitment.

### **Summary:**

The Bighorn Basin PRMP/FEIS failed to use the best available science to identify habitat objectives, and failed to define sage-grouse habitat, specifically:

- The BLM failed to use the best available science in establishing minimum grass height for nesting sage grouse.
- The BLM misapplied Technical Reference 1737-15 in regards to habitat objectives “desired condition” in riparian habitat and mesic meadows.

### **Response:**

- The BLM developed and analyzed alternatives, including habitat objectives, in the Bighorn Basin PRMP/FEIS using the best available information in compliance with federal laws, guidelines, and policies. The BLM included references that support decisions with regard to Livestock Grazing Management and Habitat Management Objectives. Habitat management objectives are discussed in Section 2.3 GRSG Habitat Management (p. 2-5 to 2-39), Section 2.3.7 GRSG Habitat Objectives (p. 2-33 to 2-39), and Section 2.3.8 Monitoring Framework for GRSG Habitat Management (p. 2-39). Table 2-5, GRSG Seasonal Habitat Objectives (p. 2-35) details the scientifically-referenced habitat objective. The values for the indicators were derived using a synthesis of current local and regional GRSG habitat research and data and reflect variability of ecological sites. The habitat cover indicators are consistent with existing indicators used by the BLM.

The shrub community types utilized by the GRSG are described in Chapter 3, Section 3.4.2, Vegetation - Shrubland and Grassland Communities, p. 3-91 to 3-94 of the Bighorn Basin PRMP/FEIS; riparian habitat is described in Section 3.4.3, Vegetation - Riparian/Wetland Resources, p. 3-94 to 3-98). The use of different habitat types (and their delineation) by the GRSG is discussed in Section 3.4.9, Special Status Species - Wildlife - Game Birds (GRSG), p. 3-125 to 3-129.

The best available science supports the BLM perennial grass and forb height habitat objective of “adequate nest cover greater than or equal to 6 inches or as determined by ESD site potential and local variability” (p. 2-36), including:

- Connelly, J.W., M.A. Schroeder, A.R. Sands, and C.E. Braun. 2000. Guidelines to manage GRSG populations and their habitats. *Wildlife Society Bulletin* 28:967-985.
- Connelly, J.W., K.P. Reese, and M.A. Schroeder. 2003. Monitoring of GRSG habitats and populations. University of Idaho College of Natural Resources Experiment Station Bulletin 80. University of Idaho, Moscow, ID.
- Doherty, K.E., D.E. Naugle, J.D. Tack, B.L. Walker, J.M. Graham and J.L. Beck. 2014. Linking Conservation Actions to Demography: Grass Height Explains Variation in GRSG Nest Survival. *Wildlife Biology*, 20(6): 320-325.
- Hagen, C.A., J.W. Connelly, and M.A. Schroeder. 2007. A meta-analysis of GRSG *Centrocercus urophasianus* nesting and brood-rearing habitats. *Wildlife Biology* 13 (Supplement 1):42-50.
- Stiver, S.J., E.T. Rinkes, D.E. Naugle, P.D. Makela, D.A. Nance, and J.W. Karl. In Press. GRSG Habitat Assessment Framework: Multi-scale Habitat Assessment Tool. Bureau of Land Management and Western Association of Fish and Wildlife Agencies Technical Reference. U.S. Bureau of Land Management, Denver, Colorado.

The USFWS and WGFD are cooperating agencies for the RMP and involved in development of the Final EIS. Current and proposed BLM management is designed to help support WGFD population objectives for big game and GRSG. The management actions related to fish, wildlife, and special status species, included in this RMP, are expected to mitigate impacts to wildlife and are based on recommendations from the appropriate state and federal agencies; the BLM will continue to work with the USFWS and WGFD when implementing the RMP.



In response to the GRSG management objectives described in the 2006 WAFWA GRSG Comprehensive Conservation Strategy, many reports have been prepared for the development of management recommendations, strategies, and regulatory guidelines. The NTT report (NTT 2011), Conservations Objectives Team (COT; USFWS 2013), and the Summary of Science, Activities, Programs and Policies that Influence the Rangeland Conservation of GRSG (also referred to as the BER; Manier et al. 2013) are the most widely used reports that have been incorporated and address the effects of implementing GRSG conservation measures on public lands. Both documents helped planning teams identify issues within their planning area, determine the context within the management zone, prioritize habitats, and assist in creating a range of alternatives with management actions that can alleviate or mitigate threats to GRSG at an appropriate level. Both the NTT report and the COT report tier from the WAFWA GRSG Comprehensive Conservation Strategy (Stiver et al. 2006).

The BLM did not fail to use the best available science to identify GRSG habitat or GRSG habitat objectives.

- The Habitat Objectives for GRSG (Table 2-5, Bighorn Basin PRMP/FEIS, p. 2-37) are a list of indicators and values that describe GRSG seasonal habitat conditions. The values for the indicators were derived using a synthesis of current local and regional GRSG habitat research and data and reflect variability of ecological sites. The habitat cover indicators are consistent with existing indicators used by the BLM.

When determining if a site is meeting habitat objectives, the measurements from that particular site will be assessed based on the range of values for the indicators in the habitat objectives table. The habitat objectives table is one component of GRSG multi-scale habitat assessment (see Monitoring Framework, Appendix Y). The results of the habitat assessment will be used during the land health evaluation to ascertain if the land health standard applicable to GRSG habitat (e.g., special status species habitat standard) is being met (Bighorn Basin PRMP/FEIS, Section 2.3.7 Habitat Management Objectives, p. 2-33 to 2- 38).

Riparian/wetland areas in the Planning Area are inventoried to estimate their functional status using PFC assessment methodologies developed by the BLM, USFS, NRCS, and others (Bighorn Basin PRMP/FEIS, p. 3-95). These methodologies employ an interdisciplinary team that inspects and analyzes the attributes and processes associated with a riparian/wetland area's hydrology, vegetation, and soils to estimate its relative health. PFC is a riparian health assessment and communication tool that focuses on the attributes and processes associated with a riparian/wetland area's hydrology, vegetation, and soils instead of its values or uses.

The protestor's assertion that the BLM misapplied Technical Reference 1737-15 is incorrect. The Brood Rearing/Summer Habitat cover indicators that would be assessed for riparian and mesic sites include the three indicators (Table 2.5, GRSG Seasonal Habitat Objectives, p. 2-37). They are: (1) perennial grass cover and forbs – desired condition is “greater than or equal to 10 percent (for) mesic sites”, (2) riparian

areas/mesic meadows – desired condition is “Proper Functioning Condition”, and (3) Upland and Riparian Perennial Forb Availability – desired condition is “Preferred forbs are common with several preferred species present”. These three indicators would be collectively assessed in determining whether or not seasonal habitat objectives are being met in riparian and/or mesic areas; they do not stand alone from one another in evaluating the cover attribute for Brood Rearing/Summer habitat. Indicators roll up in sum to describe attributes and do not stand alone in describing an attribute such as cover.

The BLM did not fail to use the best available science or misapply BLM Technical Reference 1737-15 in regards to habitat objectives.

### ***GRSG - Livestock Grazing***

**Issue Number:** PP-WY-BIGHORN-GRSG-15-14-10

**Organization:** Western Watersheds Project  
**Protestor:** Travis Bruner

**Issue Excerpt Text** The PLUP/FEIS doesn’t analyze seasonal restrictions nor does it set utilization limits that conform to the scientific recommendations.

Where experts have articulated minimum criteria for excluding livestock (on rangeland with less than 200 lbs/ac of herbaceous vegetation per year) and questioning the appropriateness of grazing on lands producing 400 lbs/ac/year,<sup>50</sup> the PLUP/FEIS has not considered limiting grazing in this way within the planning area. The PLUP/FEIS also doesn’t specify a utilization limit on grazing, but Dr. Braun recommends a 25-30 percent utilization cap and recalculating stocking rates to ensure that livestock forage use falls within those limits. Despite this clear articulation of how to best conserve, enhance, and recover sage-grouse, the PLUP/FEIS does not reconsider the stocking rates within the planning area or set utilization criteria, a fatal flaw.

**Issue Number:** PP-WY-BIGHORN-GRSG-15-14-6

**Organization:** Western Watersheds Project  
**Protestor:** Travis Bruner

**Issue Excerpt Text:** We protest the failure of the plan to mandate specific terms and conditions to grazing permits, including limits season-of-use and forage utilization levels by livestock, or any consequence if those terms and conditions are violated.

In order to conserve, protect, and enhance sage-grouse populations, the plan must include restrictions on spring grazing in all sage-grouse breeding habitat. WWP DEIS Comments at 31, 32, DSEIS Comments at 13. In addition to the needs for hiding cover and concealment of nests and young broods, sage-grouse eggs and chicks need to be protected from the threats of nest disturbance, trampling, flushing, egg predation, or egg crushing that livestock pose to nesting sage-grouse. See

Beck and Mitchell, 2000, as cited in Manier et al. 2013; Coates et al., 2008. This nesting season is crucial for the species’ survival because its reproductive rates are so low; failing to institute season- of-use restrictions for permitted grazing, and the failure to even consider it, are obvious failures of the plan.

**Issue Number:** PP-WY-BIGHORN-GRSG-15-14-9

**Organization:** Western Watersheds Project  
**Protestor:** Travis Bruner

**Issue Excerpt Text:** The agencies also fail to define livestock grazing, and its associated infrastructure, as a surface disturbing or disruptive activity that should be avoided during breeding and nesting (March 1- June 15). And yet, the best science recommends that grazing be restricted during this same period. However,

the only seasonal restrictions on livestock grazing pertain to vague and inadequate limits on trailing and bedding activities near occupied leks. This limited protection is inconsistent with other perennial permitted authorized livestock use that may occur within, around, and directly on top of leks without restriction. The distinction is arbitrary and capricious, and the PLUP/FEIS should be revised to limit spring season harms to leks.

**Summary:**

- The agencies fail to define livestock grazing, and its associated infrastructure, as a surface disturbing or disruptive activity contrary to the best available science.
- Best available science requires protection during nesting season from effects of livestock grazing; this was not considered in the analysis.

**Response:**

- The Council on Environmental Quality's (CEQ) regulations implementing NEPA require that agencies use "high quality information" (40 CFR 1500.1(b)). NEPA regulations require the BLM to "insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements" (40 CFR 1502.24).

The BLM NEPA Handbook also directs the BLM to "use the best available science to support NEPA analyses, and give greater consideration to peer-reviewed science and methodology over that which is not peer-reviewed" (BLM Handbook H-1790-1, p. 55). Under the BLM's guidelines for implementing the Information Quality Act, the BLM applies the principle of using the "best available" data in making its decisions (BLM Information Quality Act Guidelines, February 9, 2012).

In the NTT report, livestock grazing is identified as a diffuse disturbance, rather than a discrete disturbance. According to the NTT Report (BLM, 2011, p. 8): "Sage-grouse are extremely sensitive to discrete disturbance (Johnson et al. 2011, Naugle et al. 2011a,b) although diffuse disturbance over broad spatial and temporal scales can have similar, but less visible effects."

Though grazing is not identified as a discrete threat, there are provisions and management actions proposed in the NTT Report and incorporated in the Bighorn Basin PRMP/FEIS that address these impacts. For example, action # 4092 of Table 2-4. BLM Proposed Plan for GRSG Habitat Management states: "Maintain seeps, springs, wet meadows, and riparian vegetation in a functional and diverse condition for young GRSG and other species that depend on forbs and insects associated with these areas. Consider management actions if desirable green vegetation associated with these wet areas is not available, accessible, or cannot be maintained with current livestock, wildlife, or wild horse use, and the impacts are outweighed by the improved habitat quality" (p. 2-21); and

action # 4108 “The BLM will collaborate with appropriate Federal agencies, and the State of Wyoming as contemplated under Governor Executive Order 2013-3, to: (1) develop appropriate conservation objectives; (2) define a framework for evaluating situations where GRSG conservation objectives are not being achieved on federal land, to determine if a causal relationship exists between improper grazing (by wildlife or wild horses or livestock) and GRSG conservation objectives; and (3) identify appropriate site-based action to achieve GRSG conservation objectives within the framework” (p. 4-22); and action # 6267 “In cooperation, consultation, and coordination with permittees/lessees, cooperators, and interested public, develop and implement appropriate livestock grazing management actions to enhance land health, improve forage for livestock, and meet other multiple use objectives by using the Wyoming Guidelines for Livestock Grazing Management, other appropriate BMPs (see Appendices L and W), and development of appropriate range improvements. The BLM will prioritize (1) the review of grazing permits/leases, in particular to determine if modification is necessary prior to renewal, and (2) the processing of grazing permits/leases in PHMAs. In setting workload priorities, precedence will be given to existing permits/leases in these areas not meeting Land Health Standards, with focus on those containing riparian areas, including wet meadows. The BLM may use other criteria for prioritization to respond to urgent natural resource concerns (ex., fire) and legal obligations” (p. 2-26).

The agencies used the best available science to identify and address the threat of livestock grazing in the Bighorn Basin PRMP/FEIS.

- When preparing an EIS, NEPA requires an agency to rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, to briefly discuss the reasons for their having been eliminated (40 CFR 1502.14(a)). When there are potentially a very large number of alternatives, the BLM may only analyze a reasonable number to cover the full spectrum of alternatives (BLM Handbook H-1790-1, Section 6.6.1 quoting Question 1b, CEQ, Forty Most Asked Questions Concerning CEQ's NEPA Regulations, March 23, 1981).

In accordance with the BLM's Land Use Planning Handbook and BLM IM No. 2012-169, the BLM considered a range of alternatives with respect to both areas that are available or unavailable for livestock grazing on an area-wide basis. The range of alternatives considered includes a meaningful reduction in livestock grazing through a reduction in areas available to livestock grazing and forage allocation. This range of alternatives meets the purpose and need of the Bighorn Basin PRMP/FEIS and addresses the resource issues identified during the scoping period. The Bighorn Basin PRMP/FEIS analyzed six alternatives, which are described in Chapter 2, Resource Management Alternatives (p. 2-1 through 2-374). A number of alternatives were also considered but not carried forward for detailed analysis (Section 2.4, p. 40 through 2-48). The alternatives analyzed in the Bighorn Basin PRMP/FEIS cover the full spectrum by varying in: (1) degrees of protection for each resource and use; (2) approaches to management for each resource and use; (3) mixes of allowable, conditional, and prohibited uses in various geographic areas; and 4) levels and methods for restoration.

Alternatives B and E (two of the six analyzed in full), would result in the greatest restrictions on mineral development, ROW authorizations, and other surface-disturbing activities; motorized travel; and livestock grazing management, both resulting in large acreages being closed to livestock grazing.

All alternatives would allow for seasonal restrictions and/or the reduction or elimination of livestock grazing in specific situations where livestock grazing causes or contributes to conflicts with the protection or management of other resource values or uses. Such modifications would be made during site-specific activity planning and associated environmental review. These modifications would be based on several factors, including monitoring studies, review of current range management science, input from livestock operators and interested publics, and the ability to meet the standards in Appendix N.

The BLM has considerable discretion through its grazing regulations to determine and adjust stocking levels, seasons-of-use, and grazing management activities, and to allocate forage to uses of the public lands in an RMP. Suitable measures, which could include reduction or elimination of livestock grazing, are provided for in this PRMP/FEIS, which could become necessary in specific situations where livestock grazing causes or contributes to conflicts with the protection and/or management of other resource values or uses. Such determinations would be made during site-specific activity planning and associated environmental analyses. These determinations would be based on several factors, including monitoring studies, current range management science, input from livestock operators and the interested public, and the ability of particular allotments to meet the RMP objectives.

Livestock grazing permit modification will be in accordance with the Rangeland Management Grazing Administration Regulations found in 43 CFR 4100. Future changes to livestock grazing permits would happen at the project-specific (allotment) level after the appropriate monitoring, Rangeland Health Assessments, and site-specific NEPA, occurs. At that time, permits would be developed to ensure the allotment(s) meets all applicable Standards and would strive to meet all applicable GRSG habitat objectives described in 2.3.7 GRSG Habitat Objectives (p 2-33 through 2-38), including those for GRSG breeding and nesting habitat.

In summary, current resource conditions on BLM-administered land, including range vegetation, watershed, and wildlife habitat, as reflected in land health assessments, do not warrant prohibition of livestock grazing, or season-of-use restrictions, throughout the entire Planning Area. Such a blanket prohibition or restriction, in the absence of resource conflicts, would not meet the purpose and need and would be inconsistent with the policy objectives of the area. However, as described above, the range of alternatives does include a meaningful reduction in grazing throughout the Planning Area.

The BLM considered a reasonable range of alternatives and considered grazing restrictions in the Bighorn Basin PRMP/FEIS in full compliance with NEPA; changes to individual permits are not appropriate at the land management planning scale and would occur at the implementation stage.

### *Energy Policy Act of 2005*

**Issue Number:** PP-WY-BIGHORN-GRSG-15-04-18

**Organization:** Devon Energy Corporation

**Protestor:** Dru-Bower Moore

**Issue Excerpt Text** Under these proposed management actions, BLM proposes to adopt a default 3-mile surface-disturbance avoidance buffer around important cultural sites where setting is an important aspect of the integrity of the site, unless the visual horizon is closer. BLM proposes to adopt a similar default 3-mile buffer around the Nez Perce National Historic Trail and a similar default 2-mile buffer around other “important” trails that are not congressionally designated.

Devon appreciates that the BLM proposed to reserve some flexibility to decrease the default buffers distances in areas in which the visual horizon is closer; however, because the buffer distances proposed are so large, the proposed management for important cultural sites and trails is still more restrictive than necessary and thus is in violation of the Energy Policy Act of 2005. Further, these unnecessarily large buffers will limit multiple use across the landscape, in violation of the BLM’s multiple use obligation under FLPMA.

Section 363 of the Energy Policy Act of 2005 requires the Secretary of the Interior and the Secretary of Agriculture to enter into a Memorandum of Understanding (“MOU”) regarding oil and gas leasing and to ensure that lease stipulations are applied consistently, coordinated between agencies, and “only as restrictive as necessary to protect the resources for which the stipulations are applied.” Energy Policy Act of 2005, Pub. L. No. 109-58, § 363(b)(3), 119 Stat. 594, 722 (2005). The MOU required by § 363 of the Energy Policy Act of 2005 was finalized in April of

2006 as BLM MOU WO300-2006-07. This requirement was also included in the BLM’s Land Use Planning Handbook. BLM Manual H-1601-1, Appd. C, Section II.H, pg. 24 (Rel. 1-1693 03/11/05).

**Issue Number:** PP-WY-BIGHORN-GRSG-15-12-32

**Organization:** Petroleum Association of Wyoming / Western Energy Alliance

**Protestor:** Esther Wagner

**Issue Excerpt Text:** BLM proposes to adopt a default 3-mile surface-disturbance avoidance buffer around important cultural sites where setting is an important aspect of the integrity of the site, unless the visual horizon is closer. BLM proposes to adopt a similar default 3-mile buffer around the Nez Perce National Historic Trail and a similar default 2-mile buffer around other “important” trails that are not congressionally designated. The Trades appreciate that the BLM proposed to reserve some flexibility to decrease the default buffers distances in areas in which the visual horizon is closer. However, because the buffer distances proposed are so large, the proposed management for important cultural sites and trails is still more restrictive than necessary and thus is in violation of the Energy Policy Act of 2005. Further, these unnecessarily large buffers will limit multiple use across the landscape, in violation of BLM’s multiple use obligation under FLPMA.

Section 363 of the Energy Policy Act of 2005 requires the Secretary of the Interior and the Secretary of Agriculture to enter into a Memorandum of Understanding (“MOU”) regarding oil and gas leasing and to ensure that lease stipulations are applied consistently, coordinated between agencies, and “only as restrictive as necessary to protect the resources for which the

stipulations are applied.” Energy Policy Act of 2005, Pub. L. No. 109-58, § 363(b)(3), 119 Stat. 594, 722 (2005). The MOU required by § 363 of the Energy Policy Act of 2005 was finalized in April of 2006 as BLM MOU WO300-2006-07. This

requirement was also included in BLM’s Land Use Planning Handbook. BLM Manual H-1601-1, Appd. C, Section II.H, pg. 24 (Rel. 1- 1693 03/11/05).

### **Summary:**

The Bighorn Basin PRMP/FEIS violates the Energy Policy Act of 2005 by failing to apply the least restrictive stipulations for oil and gas leasing by requiring management buffers around cultural sites and the Nez Perce National Historic Trail and other important trails.

### **Response:**

Section 363 of the Energy Policy Act of 2005 and its implementing memorandum of understanding requires that the Secretaries of the Interior and Agriculture ensure that oil and gas lease stipulations be “only as restrictive as necessary to protect the resource for which the stipulations are applied” (42 U.S.C. section 15801 et. seq.; BLM MOU WO300-2006-07).

In order to mitigate impacts to other resources, the BLM appropriately proposes and analyzes restrictions on potential oil and gas leasing through oil and gas lease stipulations, conditions of approval, and best management practices. The BLM policy requires RMPs to identify specific lease stipulations and resource condition objectives and general/typical conditions of approval and best management practices that will be employed to accomplish these objectives in areas open to leasing. (BLM Handbook H-1601-1, p. C-23 and C-24). Accordingly, each alternative analyzed in the Bighorn Basin PRMP/FEIS presents a set of oil and gas conditions of approval and best management practices necessary to meet the goals and objectives for each resource and resource use in the planning area.

The Bighorn Basin PRMP/FEIS fully analyzed impacts of the stipulations, conditions of approval, and best management practices for each alternative (PRMP/FEIS, Chapter 4). By comparing impacts across the alternatives, the BLM determined which management actions in the Proposed Alternative were necessary, without being overly restrictive, to meet the goals and objectives of the Bighorn Basin PRMP/FEIS.

The Bighorn Basin PRMP/FEIS developed a range of alternatives regarding cultural and trail buffers (p. 2-171 through 2-172 and 2-345 through 2-346, respectively) and fully analyzed the impacts of those buffers for each alternative (Section 4.5.1 and Section 4.7.4). Alternatives B and C were determined to be more restrictive than the Proposed Action with regard to cultural buffers (p. 4-367). Alternatives B and E were determined to be more restrictive than the Proposed Action with regard to trail buffers (p. 4-581). Additionally, site-specific NEPA analysis would be required prior to implementing the aforementioned buffers. Based on the impacts analysis performed, the BLM determined that the stipulations, conditions of approval, and best management practices considered, and identified as preferred in the PRMP/FEIS, are not overly

restrictive, are necessary to meet the goals and objectives of the Bighorn Basin PRMP/FEIS, and therefore do not violate the Energy Policy Act or the associated MOU.

### *Air Quality Climate Change Noise*

**Issue Number:** PP-WY-BIGHORN-GRSG-15-04-7

**Organization:** Devon Energy Corporation

**Protestor:** Dru-Bower Moore

**Issue Excerpt Text:** The BLM does not have direct authority over air quality or air emissions under the Clean Air Act (CAA). 42 USC §§ 7401-7671q. Under the express terms of the CAA, the EPA has the authority to regulate air emissions. In Wyoming, the EPA has delegated its authority to the Wyoming Department of Environmental Quality (WDEQ). See 42 U.S.C. §§ 7401 - 7671q; 40 CFR pts. 50 - 99; 40 C.F.R. § 52.2620 (Wyoming's State Implementation Plan); Wyo. Stat. Ann. §§ 35-11-201 to 214 (LexisNexis 2011); Wyo. Air Quality Stds. & Regs. (WAQSR) Chs. 1 - 14. The Secretary of the Interior, through the IBLA, has determined that, in Wyoming, the State of Wyoming and not the BLM has authority over air emissions.

**Issue Number:** PP-WY-BIGHORN-GRSG-15-04-8

**Organization:** Devon Energy Corporation

**Protestor:** Dru-Bower Moore

**Issue Excerpt Text:** The BLM should also recognize that the agency does not have the authority to implement, regulate, or enforce the PSD increment. The BLM's lack of authority regarding PSD increment analysis was recently recognized in the Memorandum of Understanding (MOU) issued by the Department of the Interior, Department of Agriculture, and the EPA which indicates that the BLM's NEPA documents relating to oil and gas activities will model PSD increment consumption for

informational purposes only. See Memorandum of Understanding Among Department of Agriculture, Department of the Interior and the Environmental Protection Agency Regarding Air Quality Analyses and Mitigation for Federal Oil and Gas Decisions Through the National Environmental Policy Act Process (EPA MOU), Section V.G (June 23, 2011). Wyoming's PSD program was approved by the EPA in June of 2012, 77 Fed. Reg. 33021 (Jun. 12, 2012), and currently controls Wyoming's enforcement of the PSD program within the State of Wyoming. There is no justifiable or legal support for the BLM's alleged authority over PSD analysis. Given the limits on the BLM's authority, and the fact a well-defined regulatory scheme exists to control visibility and PSD increment analysis, the BLM must revise the objectives set forth in the Proposed Bighorn RMP regarding visibility and PSD consumption.

**Issue Number:** PP-WY-BIGHORN-GRSG-15-04-9

**Organization:** Devon Energy Corporation

**Protestor:** Dru-Bower Moore

**Issue Excerpt Text:** FLPMA does not require or authorize the BLM to enforce air quality controls. Instead, FLPMA provides: "In the development and revision of land use plans, the Secretary shall...provide for compliance with applicable pollution control laws, including State and Federal air, water, noise, or other pollution standards or implementations plans." 43 USC § 1712(c)(8). The language of the statute demonstrates BLM is required to "provide for compliance," not independently regulate



air emissions. *Id.* So long as the Bighorn RMP does not interfere with the enforcement of state and federal pollution laws, the BLM has satisfied its obligations under FLPMA. FLPMA does not authorize the BLM to independently regulate air quality control measures such as those imposed in the Proposed Bighorn RMP.

**Issue Number:** PP-WY-BIGHORN-GRSG-15-12-19

**Organization:** Petroleum Association of Wyoming / Western Energy Alliance

**Protestor:** Esther Wagner

**Issue Excerpt Text:** BLM does not have direct authority over air quality or air emissions under the Clean Air Act (CAA). 42 USC § 7401 – 7671q. Under the express terms of the CAA, the EPA has the authority to regulate air emissions. In Wyoming, the EPA has delegated its authority to the Wyoming Department of Environmental Quality (WDEQ). See 42 USC § 7401 - 7671q; 40 CFR pts. 50.99; 40 CFR § 52.2620 (Wyoming’s State Implementation Plan); Wyo. Stat. Ann. § 35-11-201 to 214 (LexisNexis 2011); Wyo. Air Quality Stds. & Regs. (WAQSR) Chapters 1-14. The Secretary of the Interior, through the IBLA, has determined that, in Wyoming, the State of Wyoming and not BLM has authority over air emissions.

**Issue Number:** PP-WY-BIGHORN-GRSG-15-12-20

**Organization:** Petroleum Association of Wyoming / Western Energy Alliance

**Protestor:** Esther Wagner

**Issue Excerpt Text:** BLM should also recognize that the agency does not have the authority to implement, regulate, or enforce the PSD increment. BLM’s lack of authority regarding PSD increment analysis was recently recognized in the Memorandum of

Understanding (MOU) issued by the DOI, Department of Agriculture, and the EPA which indicates that BLM NEPA documents relating to oil and gas activities will model PSD increment consumption for informational purposes only. See Memorandum of Understanding Among Department of Agriculture, DOI and the Environmental Protection Agency Regarding Air Quality Analyses and Mitigation for Federal Oil and Gas Decisions Through the National Environmental Policy Act Process (EPA MOU), Section V.G (June 23, 2011). Wyoming’s PSD program was approved by the EPA in June of 2012, 77 Fed. Reg. 33021 (Jun. 12, 2012), and currently controls Wyoming’s enforcement of the PSD program within the State of Wyoming. There is no justifiable or legal support for BLM’s alleged authority over PSD analysis. Given the limits on BLM’s authority, and the fact a well-defined regulatory scheme exists to control visibility and PSD increment analysis, BLM must revise the objectives set forth in the Proposed Bighorn RMP regarding visibility and PSD consumption.

**Issue Number:** PP-WY-BIGHORN-GRSG-15-12-21

**Organization:** Petroleum Association of Wyoming / Western Energy Alliance

**Protestor:** Esther Wagner

**Issue Excerpt Text:** FLPMA does not require or authorize BLM to enforce air quality controls. Instead, FLPMA provides: “In the development and revision of land use plans, the Secretary shall...provide for compliance with applicable pollution control laws, including State and Federal air, water, noise, or other pollution standards or implementations plans.” 43 USC § 1712(c)(8). The language of the statute demonstrates that the BLM is required to

“provide for compliance,” not independently regulate air emissions. Id. So long as the Bighorn RMP does not interfere with the enforcement of state and federal pollution laws, BLM has satisfied its obligations

under FLPMA. FLPMA does not authorize BLM to independently regulate air quality control measures such as those imposed in the Proposed RMP.

**Summary:**

The BLM does not have direct authority over air quality or air emissions under the Clean Air Act (42 USC Sections 7401-7671q), nor does the agency have the authority to implement, regulate, or enforce the Prevention of Significant Deterioration (PSD) increment. Additionally, FLPMA does not require or authorize the BLM to independently enforce air quality controls. The Secretary of the Interior, through the IBLA, has determined that, in Wyoming, the Wyoming Department of Environmental Quality and not the BLM has authority over air emissions. Therefore, BLM must revise objectives in the Bighorn Basin PRMP/FEIS regarding visibility and PSD consumption.

**Response:**

The BLM manages public lands in accordance with FLPMA. Section 102(8) of FLPMA requires that “the public lands be managed in a manner that will protect...air and atmospheric [values]”. Under NEPA, the BLM is required “to identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment” and to “use all practicable means, consistent with the requirements of the Act and other essential considerations of national policy, to restore and enhance the quality of the human environment and avoid or minimize any possible adverse effects of their actions upon the quality of the human environment” (40 CFR 1500.2). NEPA also requires the BLM to include a discussion of measures that may mitigate adverse environmental impacts (40 CFR 1502.14(f), 40 CFR 1502.16(h)).

Through its RMPs, the BLM establishes desired outcomes for air quality and sets "area-wide restrictions" needed to meet those outcomes (BLM Handbook H-1601-1, p. C-2).

The Bighorn Basin PRMP/FEIS seeks to manage the public lands in a manner that appropriately protects air quality and its related values, as described in the management goals for air quality (see Table 2-9 – Air Quality) “Minimize the impact of management actions in the Planning Area on air quality by complying with all applicable air quality laws, rules, and regulations” and “Improve air quality in the Planning Area as practicable.” In the Bighorn Basin PRMP/FEIS, the BLM conducted air quality analyses to determine impacts from specific federal land management actions anticipated under the Bighorn Basin PRMP/FEIS on air quality. The BLM developed emission control strategies and mitigation measures to address those impacts and achieve desired outcomes for air quality and visibility.

Establishing air quality and visibility measures and conducting a PSD analysis in the Bighorn Basin PRMP/FEIS that may be applied to future actions in the planning area does not mean that the BLM is writing new regulations, nor is the BLM establishing itself as a regulatory agency or

establishing mitigation measures that are intended to supersede the agencies with regulatory authority over air quality, such as the Wyoming Department of Environmental Quality. Rather, the BLM is identifying and responding to estimated impacts from the Bighorn Basin PRMP/FEIS and complying with direction under NEPA, FLPMA, and the Clean Air Act. The Bighorn Basin PRMP/FEIS does not exceed the BLM's statutory authority by proposing restrictions for activities that may impact air quality and/or visibility.

### *Areas of Critical Environmental Concern*

**Issue Number:** PP-WY-BIGHORN-GRSG-15-08-14

**Organization:** WildEarth Guardians

**Protestor:** Erik Molvar

**Issue Excerpt Text** The BLM has not complied with FLPMA's mandate that it give priority to designating ACECs here. Although BLM considered designating certain areas as ACECs, found some of them eligible, and acknowledged that ACEC designation would best protect their relevant and important values, the BLM determined not to designate them. Instead, the BLM created a completely new, less-restrictive designation called Sagebrush Focal Areas. The BLM failed to provide an adequate explanation of its decision not to designate these areas as ACECs, including an explanation of how their relevant and important values will be protected absent such designation. Where the BLM has acknowledged areas meet the criteria for ACEC designation and would be best protected as ACECs, yet has instead developed a new, less-restrictive designation for them, it has failed to put designation of ACECs first, in violation of FLPMA.

**Issue Number:** PP-WY-BIGHORN-GRSG-15-14-21

**Organization:** Western Watersheds Project

**Protestor:** Travis Bruner

**Issue Excerpt Text:** The power to protect areas of critical environmental concern (ACECs) is the seminal tool Congress gave BLM to protect unique and special values on lands it manages. FLPMA imposes a duty on BLM to use this tool by placing a priority on protecting ACECs in the land use planning process. However, BLM has violated this duty in the National GRSG Planning Strategy, as the FEIS uniformly fails to recommend designation of GRSG ACECs – even though the science and analysis in the FEIS underscores that GRSG ACECs are the only means to achieve adequate protection of critical sagebrush-steppe habitats needed to ensure survival of the GRSG across its range.

**Issue Number:** PP-WY-BIGHORN-GRSG-15-14-22

**Organization:** Western Watersheds Project

**Protestor:** Travis Bruner

**Issue Excerpt Text:** The BLM has violated its FLPMA duties in the FEIS, individually and cumulatively, both by failing to conduct the analysis of potential ACECs required under FLPMA and its implementing regulations and BLM Handbook; and by failing to designate Sage-Grouse ACECs in all key habitats (focal areas and priority habitats) which are essential to conservation of the species in each state and across the range.

**Issue Number:** PP-WY-BIGHORN-GRSG-15-14-23

**Organization:** Western Watersheds Project  
**Protestor:** Travis Bruner

**Issue Excerpt Text:** The Wyoming FEIS fails to prioritize the designation and protection of ACECs. Indeed, although BLM received several nominations for GRSG ACECs, and BLM concluded that these nominations met the “significance” and “importance” criteria, the BLM failed to designate any GRSG ACEC. The BLM similarly failed to provide any reasoned explanation for its refusal to prioritize and protect ACECs, which is especially troubling here since BLM acknowledged that ACEC designation would provide better protections to GRSG.

**Issue Number:** PP-WY-BIGHORN-GRSG-15-14-24

**Organization:** Western Watersheds Project  
**Protestor:** Travis Bruner

**Issue Excerpt Text:** Specifically, the FEIS violates FLPMA in the following ways:  
(1) The BLM acknowledged that a land

class designation affording greater protection to GRSG was necessary, but failed to establish sage-grouse ACECs;

(2) The BLM failed to explain its decision not to designate ACECs;

(3) The BLM arbitrarily and capriciously determined not to protect all PPH as ACECs;

(4) The BLM relied on inappropriate assumptions in identifying potential ACECs.

**Issue Number:** PP-WY-BIGHORN-GRSG-15-14-25

**Organization:** Western Watersheds Project  
**Protestor:** Travis Bruner

**Issue Excerpt Text:** BLM’s failure to give priority to designating ACECs in the land-use planning process is arbitrary and capricious, an abuse of discretion, and violates FLPMA. BLM should remedy this key defect by adopting Sage-Grouse ACECs across all areas on BLM that are defined now as focal or priority habitats.

### **Summary:**

The Bighorn Basin PRMP/FEIS fails to comply with the FLPMA mandate to give priority to designating ACECs. The PRMP/FEIS did not adequately analyze potential ACECs and fails to protect relevant and importance values. BLM created Sagebrush Focal Areas, which are less restrictive than an ACEC designation and failed to provide an explanation as to how such a designation would protect the identified resource values.

### **Response:**

The BLM has acted consistent with FLPMA, which provides that BLM in its land use plans give priority to the designation and protection of areas of critical environmental concern. BLM policy does not require that a potential ACEC’s relevant and important values be protected to the same level or degree of protection in all plan alternatives: “[t]he management prescription for a potential ACEC may vary across alternatives from no special management attention to intensive special management attention” (BLM Manual Section 1613.22.B).

Elaborating further, the Manual states that “[s]ituations in which no special management attention would be prescribed (and therefore no designation) include...those in which the alternative would necessitate the sacrifice of the potential ACEC values to achieve other

purposes” (BLM Manual Section 1613.22.B.1). Thus, BLM policy allows for one or more RMP alternatives to be analyzed that would potentially impact relevant and important values in order to allow management for other prescribed purposes.

In regards to Sagebrush Focal Areas, SFAs were not included as part of the Bighorn Basin PRMP/FEIS. Therefore, the protestor’s claims regarding SFAs are moot.

The Bighorn Basin PRMP/FEIS analyzed a range of alternatives for the management of potential ACECs. The Bighorn Basin PRMP/FEIS analyzed special management attention that would fully protect relevant and important values of each potential ACEC in at least one alternative.

Additionally, Section 2.3.3, Development of the Proposed Plan for GRSG Habitat Management, as well as Records 7179, 7230, 7287, describe how the BLM has refined the Proposed Plan to provide a layered management approach that offers the highest level of protection for greater sage-grouse in the most valuable habitat.

In the Alternatives Summary Section, starting on page 2-59, the RMP/EIS details the alternatives considered for ACEC designations, including a side-by-side comparison on Table 2-7 and a qualitative description of the alternatives in the subsequent pages. Section 2.6.4 details the proposed plan’s rationale for ACEC and other special designations within the planning area. The BLM adequately considered the protection of relevant and important values in the Bighorn Basin PRMP/FEIS.

### *Fluid Minerals*

**Issue Number:** PP-WY-BIGHORN-GRSG-15-03-11

**Organization:** Local Government Cooperating Agencies

**Protestor:** Various

**Issue Excerpt Text** Appendix Y of the Draft RMP/EIS showed that the BLM reviewed MLP nominations for three areas (Absaroka-Beartooth Front, Fifteen Mile, and Bighorn Front) in the Bighorn Basin planning area and specific management direction was not provided — the three areas combined equal 812,606 acres. The BLM Wyoming Statewide MLP Evaluation (USDI 2010) concluded that the three areas proposed for the Bighorn Basin planning area do not meet MLP criteria 1 through 3 and do not qualify for analysis.

**Issue Number:** PP-WY-BIGHORN-GRSG-15-03-12

**Organization:** Local Government Cooperating Agencies

**Protestor:** Various

**Issue Excerpt Text:** In cases where existing management prescriptions related to oil and gas leasing are addressed in outdated RMPs and circumstances have changed significantly, the application of an MLP may be warranted. Conversely, a recently revised RMP or one currently under revision should identify and address all potential resource conflicts and environmental impacts from development and nullify the need for an MLP analysis.

**Issue Number:** PP-WY-BIGHORN-GRSG-15-03-13

**Organization:** Local Government Cooperating Agencies

**Protestor:** Various

**Issue Excerpt Text:** The LGCA is of the opinion that the analysis conducted during the RMP revision process addressed all potential conflicts and environmental impacts from development and goes beyond the MLP oil and gas leasing focus. MLP analysis will only serve to duplicate the information provided in the plan revision, and will unnecessarily delay leasing and add unneeded limitations that are based on arbitrary and perhaps unachievable limitations to leasing and production. In addition, MLP management actions were not adequately disclosed to the public and it is not clear how these actions were developed.

**Issue Number:** PP-WY-BIGHORN-GRSG-15-10-8

**Organization:** Beatty & Wozniak for Exxon/Mobil & XTO Energy

**Protestor:** Bret Sumner

**Issue Excerpt Text:** By creating a management mechanism whereby any authorization of an exception to allow oil and gas development within identified priority habitat requires the unanimous approval of the BLM, Wyoming Game and Fish Department (WGFD) and FWS, BLM is ceding its authority over oil and gas development to the FWS – in other words, providing FWS a de facto veto authority over decision-making vested solely with BLM via the Mineral Leasing Act and FLPMA. BLM has sole authority to determine whether an exception to a lease stipulation is warranted and cannot delegate

### **Summary:**

The Bighorn Basin PRMP/FEIS is incorrect in its use of Master Leasing Plans (MLP) because:

- The BLM Wyoming Statewide MLP evaluation concluded that the three proposed MLPs did not qualify for analysis;
- A newly-revised RMP should nullify the need for an MLP analysis;
- MLP management actions were not adequately disclosed to the public; and
- MLPs are not in accordance with BLM guidance.

that authority to another agency. See 43 C.F.R. § 3101.1-4.

**Issue Number:** PP-WY-BIGHORN-GRSG-15-11-1

**Organization:** Wyoming Outdoor Council

**Protestor:** Dan Heilig

**Issue Excerpt Text:** Master leasing plans for the Absaroka-Beartooth Front, Fifteenmile Basin, and Bighorn Front are appropriate tools to balance oil and gas leasing with the impacts and conflicts that oil and gas development will have with other resources and values in these areas. However, the design of the MLPs is not in accordance with BLM's regulatory guidance and the MLPs themselves are inadequate to fulfill their purpose, which is to provide greater analysis and focus to areas where oil and gas leasing will lead to "natural/cultural resource conflicts." H-1624-1V-2.

**Issue Number:** PP-WY-BIGHORN-GRSG-15-21-2

**Organization:** Greater Yellowstone Coalition

**Protestor:** Bradley Johnson

**Issue Excerpt Text:** The PRMP also does not provide a clear explanation of the Master Leasing Plans boundaries. The BLM needs to provide a description of how each of the three MLP boundaries was created following IM No. 2010-117, Oil and Gas Leasing Reform.

In addition, the Bighorn Basin PRMP/FEIS violates FLPMA and the MLA by providing the FWS with decision-making authority in the approval of exceptions, modifications and waivers to oil and gas lease stipulations.

**Response:**

Master Leasing Plans

BLM Washington Office Information Memorandum 2010-117, Oil and Gas Leasing Reform – Land Use Planning and Lease Parcel Reviews, established a process for ensuring orderly, effective, timely, and environmentally responsible leasing of oil and gas resources, and introduced the Master Leasing Plan (MLP) concept to promote a proactive approach to oil and gas development in areas with resource values of concern.

“RMPs make oil and gas planning decisions, such as areas closed to leasing, open to leasing, or open to leasing with major or moderate constraints (lease stipulations) based on known resource values. However, additional planning and analysis may be necessary prior to oil and gas leasing because of changing circumstances, updated policies, and new information,” (p. 3-67). The criteria for determining whether planning and analysis is provided in the Instruction Memorandum mentioned above. Additionally, “an MLP may also be completed under other circumstances at the discretion of the Field Manager, District Manager, or State Director,” (Washington Office Instruction Memorandum 2010-117).

- The protestor is correct that areas nominated for MLP analysis were initially found to not meet the required criteria for MLP analysis in the 2010 BLM Wyoming Statewide MLP evaluation; however, after State Director review, it was determined that the three areas identified in the PRMP warranted additional analysis (Proposed RMP/FEIS p. 3-68). As previously referenced, MLP analysis may be completed under the discretion of the Field Manager, District Manager, or State Director, and for this reason, the decision to include these MLPs is not contrary to BLM guidance.
- BLM guidance does not direct that MLPs should only be analyzed on existing RMPs, but rather on an “as needed” basis. BLM guidance notes that MLPs will usually be initiated in a land use plan amendment. In regards to the view that a newly revised RMP should nullify the need for MLPs, the Instruction Memorandum specifically states that “the MLP process may also be combined with a plan revision process if schedules permit,” (Washington Office Instruction Memorandum 2010-117). Analysis of MLPs was determined to be warranted for inclusion in the Bighorn Basin plan revision by the State Director.
- The CEQ regulations explicitly discuss agency responsibility towards interested and affected parties at 40 CFR 1506.6. The CEQ regulations require that agencies shall: (a) Make diligent efforts to involve the public in preparing and implementing their NEPA procedures (b) Provide public notice of NEPA-related hearings, public meetings, and the availability of environmental documents so as to inform those persons and agencies who may be interested or affected. Public involvement entails “The opportunity for participation by affected citizens in rule making, decision making, and planning with respect to the public lands, including public meetings or hearings . . . or advisory mechanisms, or other such procedures as may be necessary to provide public comment in a particular instance” (FLPMA, Section 103(d)). The MLPs identified for analysis in the PRMP/FEIS were initially presented to the public in Appendix Y, Leasing Reform and

Master Leasing Plans, of the 2011 DRMP/EIS. These MLPs were then carried forward for further alternative analysis in the Proposed RMP/FEIS. During this time, the public had a chance to, and did, comment on the inclusion of MLPs in the land use plan revision (Bighorn Basin Proposed RMP/FEIS, Appendix A, p. A-40). Management actions and objectives associated with MLPs are described in Chapter 2 of the Proposed RMP/FEIS, published May 28, 2015. In addition, by protesting the proposed plan, the public has had an opportunity to participate in the planning process.

- BLM Handbook H-1624-1 describes the four criteria necessary to trigger the analysis of an MLP, which includes, but is not limited to, “(4) additional analysis is needed to address likely resource impacts if oil and gas development were to occur where there is a potential for: multiple-use or natural/cultural resource conflicts...” In addition, “the BLM may also prepare an MLP under other circumstances at the discretion of the Field Manager, District Manager, or State Director (BLM Handbook H-1624-1, V-2). As stated in the PRMP/FEIS and previously in this response, the MLPs identified in the proposed plan were not included for meeting the necessary criteria, but rather by the discretion of the State Director (Bighorn Basin PRMP/FEIS, p. 3-67). MLPs analyzed in the FEIS were identified as having resources of concern, such as big game habitat/corridors, fragile soils, recreation opportunities, etc., and subsequent management objectives and resource protection measures were applied as part of this RMP planning initiative to address these resources of concern. A brief description of the purpose of MLPs, as well as MLP areas analyzed in the FEIS and their respective resources of concern is included beginning on page 3-67 of the Bighorn Basin PRMP/FEIS.

“The two main elements of master leasing planning for an area are the development of (1) resource condition objectives and (2) resource protection measures,” (BLM Handbook H-1624-1, V-2). Chapter 2 of the PRMP/FEIS describes the specific management goals and associated resource protection measures for the identified MLPs and resources of concern managed within them. Therefore, the MLPs presented in the PRMP/FEIS are consistent with BLM guidance and adequately address the intended resources of concern.

#### Approval of exceptions, modifications and waivers

The Bighorn Basin PRMP/FEIS does not contain the requirement of unanimous approval of the BLM, Wyoming Game and Fish Department and the USFWS to authorize exceptions to lease stipulations; however, coordination with applicable state or Federal agencies in the review of requests for exceptions, modifications and waivers is provided for by BLM Washington Office Instruction Memorandum 2008-032.

As stated in 43 CFR 3101.1-4, “a stipulation included in an oil and gas lease shall be subject to modification or waiver only if the authorized officer determines that the factors leading to its inclusion in the lease have changed sufficiently to make the protection provided by the stipulation no longer justified or if proposed operations would not cause unacceptable impacts.” While the proper delegation of authority for approving exceptions, waivers, and modifications is described in this regulation, it does not prescribe any particular methodology used in the authorized officer’s determination.

Attachment 1 of Washington Office Instruction Memorandum 2008-032 supplements BLM



Handbook H-1624-1, Planning for Fluid Mineral Resources and the 2007 Onshore Oil and Gas Order No. 1, providing further guidance on including exceptions, waivers, and modifications in land use plans. Pertaining to the process for reviewing and approving an exception to, waiver of, or modification to a stipulation on a lease that has been issued, “BLM coordination with other state or Federal agencies should be undertaken, as appropriate, and documented,” (Washington Office Instruction Memorandum 2008-032, Attachment 1-6).

### *Solid and Non-Energy Leasable Minerals*

**Issue Number:** PP-WY-BIGHORN-GRSG-15-09-3

**Organization:** American Exploration & Mining Association

**Protestor:** Laura Skaer

**Issue Excerpt Text:** The land use restrictions and prohibitions, especially the proposed density/disturbance caps (see Table 2-4 at 2-24), travel and transportation restrictions (PRMPA/FEIS at 2-75), which create de facto withdrawals are not in compliance with the specific directive pertaining to minerals in FLPMA § 102(a)(12):... the public lands [shall] be managed in a manner that recognizes the Nation’s need for domestic sources of minerals, food, timber, and fiber from the public lands including the implementation of the Mining and Minerals Policy Act of 1970 [at] 30 U.S.C. 21a... (43 U.S.C. 1701(a)(12)).

**Issue Number:** PP-WY-BIGHORN-GRSG-15-09-7

**Organization:** American Exploration & Mining Association

**Protestor:** Laura Skaer

**Issue Excerpt Text:** AEMA contends that BLM does not have the authority, outside of the regulations at 43 CFR § 3809 (Surface Management Regulations) to impose Required Design Features (hereinafter, “RDFs”) on operators exercising their rights under the General Mining Law.

**Issue Number:** PP-WY-BIGHORN-GRSG-15-09-9

**Organization:** American Exploration & Mining Association

**Protestor:** Laura Skaer

**Issue Excerpt Text:** BLM must demonstrate its compliance with the mandate under the Mining and Minerals Policy Act of 1970 (“MMPA”) (30 U.S.C. §21(a)), and FLPMA (43 U.S.C. §1701(a)(12)) to recognize the Nation’s need for domestic minerals.

The PRMPA/FEIS omits reference to MMPA’s declaration that it “is the continuing policy of the Federal government in the national interest to foster and encourage private enterprise in (1) the development of economically sound and stable domestic mining, mineral, metal and mineral reclamation industries, (2) the orderly and economic development of domestic mineral resources, reserves, and reclamation of metals and minerals to help assure satisfaction of industrial, security and environmental needs,” 30 U.S.C. § 21a.

The BLM has not documented the rationale for its decisions regarding the management of minerals. Specifically those decisions associated with how the widespread land use restrictions, prohibitions (associated with buffers, density disturbance cap, travel restrictions, and RDFs) recommended in the PRMPA/FEIS comply with the mandate under § 21(a) to recognize the Nation’s need

for domestic sources of minerals.

**Issue Number:** PP-WY-BIGHORN-GRSG-15-23-4

**Organization:** WYO-BEN

**Protestor:** Rick Magstadt

**Issue Excerpt Text:** The Proposed RMP must formally withdraw from location all areas unsuitable for mineral development. GRSG habitat, for example, has been proposed to restrict all surface disturbing activity either .25 miles or .6 miles around the lek, depending on classification. The concept of a lek is a point in time and moves without deference to mining claims. BLM cannot restrict a non-discretionary surface disturbing activity such as bentonite mining in this manner. Habitat which is not suitable for mineral development must be formally withdrawn from location, as well as recognizing valid and existing rights.

**Issue Number:** PP-WY-BIGHORN-GRSG-15-23-5

**Organization:** WYO-BEN

**Protestor:** Rick Magstadt

**Issue Excerpt Text:** The Bighorn Basin RMP Habitat Management Areas will have a 5% cap on all anthropogenic features. This

### **Summary:**

The Bighorn Basin PRMP/FEIS violates FLPMA and the MMPA, as it would manage public lands in a manner that does not recognize the nation's need for domestic minerals. Additionally, the imposition of Required Design Features, outside of what is needed to prevent unnecessary or undue degradation of public lands, would be in violation of the Mining Law of 1872.

### **Response:**

Locatable minerals are minerals for which the right to explore or develop the mineral resource on federal land is established by the location (or staking) of mining claims and is authorized under the General Mining Law of 1872. The BLM can only apply measures that may limit proposed development necessary to prevent unnecessary or undue degradation, as defined at 43 CFR 3809.5.

is in violation of the General Mining Law of 1872 and effectively removes vast areas of lawfully-claimed, valuable minerals from development. The proposed plan also calls for no surface occupation within either 0.60 miles in GHMA or 0.25 miles of a lek in PHMA, effectively taking the mineral from the claimant. The proposed action violates 30 US Code § 26 –“Locators” rights of possession and enjoyment" under the General Mining Law. The restrictions must be removed to comply with the law. The BLM must publish a Supplemental FEIS and a new LUP.

**Issue Number:** PP-WY-BIGHORN-GRSG-15-23-7

**Organization:** WYO-BEN

**Protestor:** Rick Magstadt

**Issue Excerpt Text:** The BLM has not documented the rationale for its decisions regarding the management of minerals. Specifically those decisions associated with how the widespread land use restrictions, prohibitions, withdrawals, and de facto withdrawals recommended in the PLUPA/FEIS comply with the mandate under § 21(a) to recognize the Nation's need for domestic sources of minerals.

Through the land use planning process, the BLM identifies any terms, conditions, or other special considerations needed to protect other resource values while conducting activities under the operation of the General Mining Law of 1872 (BLM Handbook H-1601-1, Appendix C, p. 25).

The Bighorn Basin PRMP/FEIS identified terms, conditions, or other special considerations needed to protect resource values within the planning area in accordance with BLM policy. Minerals goal MR-2 recognizes the need for domestic energy production, while MR-5 specifically identifies prevention of unnecessary and undue degradation of public lands, as defined in 43 CFR 3809.5, as the management standard according to which these terms, conditions, or other special conditions would be imposed.

The BLM properly exercised its authority to manage locatable mineral development.

### *Lands with Wilderness Characteristics*

**Issue Number:** PP-WY-BIGHORN-GRSG-15-01-1

**Organization:** Wyoming Wilderness Association

**Protestor:** Kyle Wilson

**Issue Excerpt Text:** The BLM did not follow BLM Manual 6310 guidance regarding the response to citizen Lands with Wilderness Characteristics information.

**Issue Number:** PP-WY-BIGHORN-GRSG-15-01-3

**Organization:** Wyoming Wilderness Association

**Protestor:** Kyle Wilson

**Issue Excerpt Text:** The necessity on the part of the BLM to revisit their inventory information and update their inventories is further highlighted by divergences between the BLM's and citizen's inventory data. While the BLM does have recent inventories on record for these areas, their inventory findings diverge from WWA's inventory findings. Our areas of interest related to this topic include:

- (1) Sheep Mountain Citizen Identified LWC
- (2) Medicine Lodge Citizen Identified LWC
- (3) Trapper Canyon Citizen Identified LWC

(4) Paint Rock Creek Citizen Identified LWC (5) Buffalo Creek Citizen Identified LWC

(6) Cedar Mountain Citizen Identified LWC (7) Alkali Creek Citizen Identified LWC (8) Bobcat Draw Citizen Identified LWC (9) Honeycombs Citizen Identified LWC (10) McCullough Peaks Citizen Identified LWC (11) Red Butte Citizen Identified LWC

**Issue Number:** PP-WY-Bighorn-15-24-2

**Organization:** The Wilderness Society

**Protestor:** Nada Culver

**Issue Excerpt Text:** Further, Manual 6310 requires that the BLM evaluate and respond to citizen proposals, including identifying any discrepancies between the proposal and the BLM's information. The BLM has not complied with this direction. As a result, the BLM's inventory of Lands with Wilderness Characteristics does not comply with FLPMA's directive to maintain a current, accurate inventory of resources in the planning area, which also prevents the agency from developing a management plan that is based on an updated inventory. In addition, the BLM has failed to comply with the directives in its own guidance and in

NEPA regarding evaluating and responding to substantive comments and data.

**Issue Number:** PP-WY-BIGHORN-GRSG-15-01-4

**Organization:** Wyoming Wilderness Association

**Protestor:** Kyle Wilson

**Issue Excerpt Text:** The Wyoming Wilderness Association's 2012 inventory submission was incorrectly categorized as being submitted by the Wyoming Wilderness Coalition, a group that is no longer formally in existence and was not in existence in 2012. Moreover, WWA's inventory submission is substantially different in terms of content, information, structure, and guidance than the citizen wilderness proposal submitted by the Wyoming Wilderness Coalition in 2004. WWA's 2012 submission include new photographic, geospatial, and narrative information that was collected in 2012. WWA's inventories followed the guidance in terms of data collection, structure, and decision-making of BLM Manual 6310, which was released in March 2012. Given the mischaracterization of WWA's 2012 inventory submission and the fact that the BLM has not adequately responded to WWA's 2012 inventory submission, it is clear that the BLM has not followed the guidance of BLM Manual 6310.

**Issue Number:** PP-WY-BIGHORN-GRSG-15-01-6

**Organization:** Wyoming Wilderness Association

**Protestor:** Kyle Wilson

**Issue Excerpt Text:** The BLM failed to comply with BLM IM 2013-106. The BLM incorporated data regarding wilderness characteristics from a contractor,

specifically Environmental Resources Group (ERG)

**Issue Number:** PP-WY-BIGHORN-GRSG-15-01-7

**Organization:** Wyoming Wilderness Association

**Protestor:** Kyle Wilson

**Issue Excerpt Text:** The BLM has not adequately responded to WWA's citizen inventories as required by BLM Manual 6310. Also, they have clearly incorporated ERG's wilderness inventories into their consideration. This is a clear indication that the BLM has given more weight to ERG's wilderness inventories than other citizen inventories. This preference given to ERG's wilderness inventories is not in compliance with WO IM 2013-106. The above excerpt from the PRMP also clearly demonstrates that the BLM incorporated ERG's inventories into their own data, which is prohibited.

**Issue Number:** PP-WY-BIGHORN-GRSG-15-03-10

**Organization:** Local Government Cooperating Agencies

**Protestor:** Various

**Issue Excerpt Text:** Information concerning constructed features, such as roads, is crucial in ruling out areas that qualify as Lands with Wilderness Characteristics. In fact, the BLM road database classified a number of linear features as roads for many years. Yet the current BLM inventory ignores many features, including roads, road maintenance, culvert installation, reservoirs, drill rows, forestry roads, drill pads, large equipment prepared sediment traps, and an extensive network of two-tracks. In addition, the inventory is lacking adequate quantification of oil and gas leases and existing abandoned

wells — which could conceivably be used in the future.

**Issue Number:** PP-WY-BIGHORN-GRSG-15-03-7

**Organization:** Local Government Cooperating Agencies

**Protestor:** Various

**Issue Excerpt Text:** The 2011 LGCA inventory utilized BLM GIS data for roads, range improvements, oil and gas fields, and data from other agencies such as the Wyoming Pipeline Authority and the Wyoming Oil and Gas Commission to identify structures within the BLM-defined Lands with Wilderness Characteristics that detract from wilderness characteristics. During the analysis it became evident that the BLM ignored their own data and other readily available data sources for structures when designating Lands with Wilderness Characteristics.

**Issue Number:** PP-WY-BIGHORN-GRSG-15-03-8

**Organization:** Local Government Cooperating Agencies

**Protestor:** Various

**Issue Excerpt Text:** BLM Manual 6310, Wilderness Characteristics Inventory (Public) provides the BLM guidance for inventorying Lands with Wilderness Characteristics. Upon detailed review of BLM Manual 6310 it is apparent that the BLM did not follow Manual 6310 procedural guidelines when conducting the inventory. The LGCA believes that the lack of confirmation of procedural guidelines has led the BLM to publically release an inaccurate Lands with Wilderness Characteristics inventory, leading to erroneous Lands with Wilderness Characteristics designations.

**Issue Number:** PP-WY-BIGHORN-GRSG-15-03-9

**Organization:** Local Government Cooperating Agencies

**Protestor:** Various

**Issue Excerpt Text:** BLM Manual 6310 discusses naturalness, allowable structures, and cumulative effects of multiple structures on apparent naturalness. The BLM did not document in their inventory the structures that exist within the Lands with Wilderness Characteristics, nor did they document the cumulative effects of those structures on the apparent naturalness of the Lands with Wilderness Characteristics. This is a direct violation of the guidance set forth in BLM Manual 6310.

**Issue Number:** PP-WY-BIGHORN-GRSG-15-21-5

**Organization:** Greater Yellowstone Coalition

**Protestor:** Bradley Johnson

**Issue Excerpt Text:** The PRMP does not provide an adequate analysis or rationale for the reduction of areas in the Lands with Wilderness Characteristics inventory and the public has not been able to comment on this change.

**Issue Number:** PP-WY-BIGHORN-GRSG-15-21-6

**Organization:** Greater Yellowstone Coalition

**Protestor:** Bradley Johnson

**Issue Excerpt Text:** Similar to Lands with Wilderness Characteristics, the claim that Wild and Scenic Rivers (WSRs) will somehow be protected under overlapping management is unfounded and the BLM provides no descriptions of what waterways have overlapping management. The justification to ignore managing eligible and suitable waterways because of overlapping designations is not identified in any public law or agency manual including the Wild and Scenic Rivers Act of 1968, BLM WSR

Manual 6400; FLPMA, or NEPA.

**Summary:**

The BLM did not provide an adequate response to citizens' wilderness inventories during the planning process, and the documentation provided for inventories indicates that the BLM did not follow Manual 6130 for the following areas: Sheep Mountain; Medicine Lodge, Trapper Canyon, Paint Rock Creek, Buffalo Creek, Cedar Mountain, Alkali Creek, Bobcat Draw, Honeycombs, McCullough Peaks, and Red Butte. The BLM violated its own policy, IM 2013-106, by accepting wilderness inventory data from a contractor working on behalf of a cooperating agency and then giving that data more weight than citizen wilderness proposals.

**Response:**

The BLM's efforts to inventory for and consider lands with wilderness characteristics in the Bighorn Basin PRMP/FEIS conform to BLM Manuals 6310 and 6320, BLM IM No. 2013-106, and the underlying requirements of Sections 201 and 202 of FLPMA. Manual 6310 provides BLM direction in inventorying for lands with wilderness characteristics as required by Section 201(a) of FLPMA, i.e., "prepare and maintain on a continuing basis an inventory of all public lands and their resources and other values" and that "this inventory shall be kept current so as to reflect changes in conditions and to identify new and emerging resources and other values." The policy provides direction for reviewing new inventory information including requiring the BLM to "compare existing data with the submitted information, determine if the conclusion reached in previous BLM inventories remains valid, determine whether the area qualifies as lands with wilderness characteristics, and document its findings." (Manual 6310 at B.2.). It also directs the BLM "to document the rationale for the findings, make the findings available to the public, and retain a record of the evaluation and the findings as evidence of the BLM's consideration." (Manual 6310 at B.2.). Manual 6320 provides the BLM with direction on the consideration of inventoried lands with wilderness characteristics through the land use planning process as part of BLM's land use planning obligations under Section 202(c)(4) of FLPMA, i.e., "in the development and revision of land use plans, the Secretary shall...rely, to the extent it is available, on the inventory of the public lands, their resources, and other values." Additionally, IM 2013-108 provides direction for the BLM to involve the public and share wilderness characteristics inventory information. As described below, the BLM satisfied these obligations.

The BLM relied on a current inventory of the resources of the public lands when preparing the Bighorn Basin PRMP/FEIS. The BLM described the inventory information it used for lands with wilderness characteristics in Section 3.6.6 and 4.6.6 of the Bighorn Basin PRMP/FEIS. Section 3.6.6 documents in detail how the Worland and Cody Field Offices solicited, received, and updated their inventories based on multiple engagements with the public regarding lands with wilderness characteristics. As required by FLPMA, the BLM relied on its current inventory of the public lands, to the extent it was available, in developing the Bighorn Basin PRMP/FEIS. The BLM adequately involved the public in preparing its inventory.

As required by FLPMA, the BLM relied on its current inventory of the public lands, to the extent

it was available, in developing the Bighorn Basin PRMP/FEIS.

### *Wild and Scenic Rivers*

**Issue Number:** PP-WY-BIGHORN-GRSG-15-11-6

**Organization:** Wyoming Outdoor Council

**Protestor:** Dan Heilig

**Issue Excerpt Text:** We protest the BLM's failure to consider a reasonable range of alternatives that would "protect the outstandingly remarkable values by means other than designation" of

20 eligible river segments released for multiple use management. See BLM 6400 WSR Manual at 4-3. Such an alternative, developed for each of the eligible segments, is required by BLM's 6400 WSR Manual and is especially appropriate here given the categorical opposition to WSR designation the BLM indicated it received from various interests.

#### **Summary:**

The BLM failed to consider the range of alternatives required by BLM policy for the 20 river segments released for multiple use management.

#### **Response:**

NEPA requires an agency to rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, to briefly discuss the reasons for their having been eliminated (40 CFR 1502.14(a)). When there are potentially a very large number of alternatives, the BLM may only analyze a reasonable number to cover the full spectrum of alternatives (BLM Handbook H-1790-1, Section 6.6.1 quoting Question 1b, CEQ, Forty Most Asked Questions Concerning CEQ's NEPA Regulations, March 23, 1981). The BLM developed a reasonable range of alternatives that meet the purpose and need of the Bighorn Basin PRMP/FEIS and that address Wild and Scenic Rivers identified during the scoping period. The Bighorn Basin PRMP/FEIS analyzed six alternatives for Wild and Scenic Rivers, which are described in Sections 3.7.5 and 4.7.5. As detailed in Section 4.7.5, two alternatives analyzed recommending all 20 waterways to Congress for inclusion in the NWSRS. This analysis can be found from page 4-592 through 4-601. Additionally, Section 2.0 of Appendix F contains more information on the suitability criteria used in the analysis. The alternatives analyzed in the Bighorn Basin PRMP/FEIS cover the full spectrum by varying in: (1) degrees of protection for each resource and use; (2) approaches to management for each resource and use; (3) mixes of allowable, conditional, and prohibited uses in various geographic areas; and, (4) levels and methods for restoration. The Table 4-35 on page 4-594 details the acreage differences in the range of alternatives by resource, and the remainder of the section (through page 4-605) provides a more qualitative discussion of the range of alternatives.

In short, the BLM considered a reasonable range of alternatives for Wild and Scenic Rivers in the Bighorn Basin PRMP/FEIS in full compliance with NEPA.

### *Recreation*

**Issue Number:** PP-WY-BIGHORN-GRSG-15-17-3

**Organization:** Individual Consumer

**Protestor:** Joseph Sylvester

**Issue Excerpt Text:** On page 3-154 Public Use: Recreational Visits and Hobby Collecting, the RMP states, "Because of a lack of information, at this time it is not possible to identify specific areas where unsupervised hobby collecting could occur; further study might determine that there are

such areas and that collecting activities can occur in those areas without long-term adverse impacts to the resource." While new sites continue to be discovered on an annual basis, there are well documented areas that Universities and Museums have come and collected fossils dating back to the 1930's. There is plenty of information that the BLM could be collecting and continuing to update on a regular basis. So that statement of "lack of information" is not acceptable.

**Summary:**

The Bighorn Basin PRMP/FEIS failed to identify specific areas where unsupervised hobby collecting could occur.

**Response:**

The BLM Land Use Planning Handbook, Appendix C, p. 11 requires that LUPs "Identify criteria or use restrictions to ensure that (a) areas containing, or that are likely to contain, vertebrate or noteworthy occurrences of invertebrate or plant fossils are identified and evaluated prior to authorizing surface-disturbing activities; (b) management recommendations are developed to promote the scientific, educational, and recreational uses of fossils; and (c) threats to paleontological resources are identified and mitigated as appropriate."

Chapter three of the PRMP/FEIS states that "The BLM manages paleontological resources for the overall benefit of the public, which can include research, preservation, interpretation and museum display, and recreation. While implementing regulations under the PRPA have not been issued at this time, the BLM is required to "manage and protect paleontological resources on federal land using scientific principles and expertise." Until the implementing regulations are issued, the BLM will continue to follow the policy and guidelines discussed above under BLM Management and Protection of Paleontological Resources" (PRMP/FEIS, p. 3-153).

Finally, the full paragraph in questions states that "The BLM allows hobby collecting of common varieties of invertebrate or plant fossils and petrified wood throughout the Planning Area. Invertebrate fossils can only be collected in reasonable quantities for personal use while making a negligible disturbance and using only hand tools; unrestricted collecting is not allowed. Petrified wood can be collected for personal use in quantities of up to 25 pounds per day, but is limited to no more than 250 pounds per year. Because of a lack of information, at this time it is not possible to identify specific areas where unsupervised hobby collecting could occur; further study might determine that there are such areas and that collecting activities can occur in those areas. Concentrating people at a developed site often increases adverse impacts to that site and the resource through increased vehicle and foot traffic and exposure to vandalism" (PRMP/FEIS, p. 3-154).



As the BLM allows for hobby collecting throughout the planning area and is required only to ensure adequate criteria or use restrictions are in place to address threats to paleontological resources - it does not need to specify areas where unsupervised hobby collecting could occur.

### ***Wild Horses and Burros***

**Issue Number:** PP-WY-BIGHORN-GRSG-15-16-2

**Organization:** American Wild Horse Preservation

**Protestor:** Deniz Bolbol

**Issue Excerpt Text:** The RMP must be revised to be in conformance with the Wild Free-Roaming Horses and Burros Act to ensure the protection of wild horses and must establish that low AML must at minimum accommodate 150 adult horses to prevent inbreeding and genetic problems in the future.

**Issue Number:** PP-WY-BIGHORN-GRSG-15-16-5

**Organization:** American Wild Horse Preservation

**Protestor:** Deniz Bolbol

**Issue Excerpt Text:** The PRMP fails to consider well known adverse impacts of the management practice of artificially skewing sex ratios. The PRMP fails to provide any any rational or scientific support for the skewing of sex ratios of wild horses in the Planning Area, specifically the Fifteen Mile HMA, yet it is still included as a management option.

### **Summary:**

The Bighorn Basin PRMP/FEIS fails to protect wild horses from inbreeding and genetic problems resulting from low AML.

The Bighorn Basin PRMP/FEIS fails to consider the adverse effects of skewing sex ratios in wild horses.

### **Response:**

#### **Wild Horse & Burros Act**

The BLM manages wild horses in accordance with the Wild Free-Roaming Horses and Burros Act of 1971 (Public Law 92-195, as amended). FLPMA directs the BLM to manage wild horses and burros as one of numerous multiple uses including mining, recreation, domestic grazing, and fish and wildlife. Additional direction is found in 43 CFR 4700, Protection, Management, and Control of Wild Free-roaming Horses and Burros. Through the land use planning process, the BLM identifies Herd Management Areas (HMA), which are areas within which wild horses and/or burros can be managed for the long term (BLM Handbook H-1601-1, Appendix C, p. 7).

#### **NEPA – Effects Analysis**

NEPA directs that data and analyses in an EIS must be commensurate with the importance of the impact (40 CFR 1502.15), and that NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail (40 CFR

1500.1(b)). The BLM is required to take a “hard look” at potential environmental impacts of adopting the Bighorn Basin PRMP/FEIS.

The level of detail of the NEPA analysis must be sufficient to support reasoned conclusions by comparing the amount and the degree of change (impact) caused by the proposed action and alternatives (BLM Handbook H-1790-1, Section 6.8.1.2). The BLM need not speculate about all conceivable impacts, but it must evaluate the reasonably foreseeable significant effects of the proposed action.

#### Wild Horse & Burros Act

The Bighorn Basin PRMP/FEIS would “Manage the Fifteenmile HMA for an initial appropriate management level of 70 to 160 wild horses, not counting foals...” and “the McCullough Peaks HMA for an initial appropriate management level of 70 to 140 wild horses, not counting foals...” (p. 2-166).

In the comment analysis found in appendix (p. A-62) the “Section 3.4.10 Wild Horses of the Draft RMP and Draft EIS incorporates by reference previous analysis that determined that managing wild horses in Herd Areas resulted in management issues or conflicts that were most appropriately resolved by the removal of wild horses.”

The BLM Wild Horses and Burro Management Handbook (H-4700-1) provides that “If the recommended minimum wild horse herd size cannot be maintained due to habitat limitations (e.g., insufficient forage, water, cover and/or space) or other resource management considerations (e.g., T&E species), a number of options may be considered as part of an appropriate site-specific NEPA analysis to mitigate genetic concerns:

- Maximize the number of breeding age wild horses (6-10 years) within the herd.
- Adjust the sex ratio in favor of males to increase the number of harems and effective breeding males.
- Introduce 1-2 young mares every generation (about 10 years), from other herds living in similar environments.”

#### NEPA – Effects Analysis

While adjusting sex ratios in favor of males to increase the number of harems is one of the mechanisms suggested by BLM Handbook H-4700-1 to mitigate genetic concerns, it is not mentioned in any of the alternatives considered by the Bighorn Basin PRMP/FEIS.

#### Wild Horse & Burros Act

The Bighorn Basin RMP Revision/FEIS establishes the following Goals and Objectives for the management of Wild Horses (p. 2-166):

“GOAL BR:11 Manage and maintain healthy wild horses and herds inside HMAs in a thriving natural ecological balance within the productive capacity of their habitat while preserving multiple use relationships.

Objectives:

BR:11.1 Adjust and maintain wild horse numbers and HMAs to comply with federal policies.  
BR:11.2 Maintain or enhance herd viability and genetic integrity.  
BR:11.3 Provide opportunities for wild horse interpretation, scientific research, and viewing.  
BR:11.4 Manage wild horses to comply with local planning documents to the greatest extent practicable.”

Additionally, it applies the following management actions in establishing initial AMLs and considerations for future adjustment of AMLs in implementation level NEPA (p. 2-166):

- “Manage the Fifteenmile HMA for an initial appropriate management level of 70 to 160 wild horses, not counting foals, in an attempt to maintain a population of 100 adult wild horses adjusted as necessary based upon monitoring.
- Manage the McCullough Peaks HMA for an initial appropriate management level of 70 to 140 wild horses, not counting foals, in an attempt to maintain a population of 100 adult wild horses adjusted as necessary based upon monitoring.
- Base future adjustments to the appropriate management level on monitoring information and multiple use considerations through development of and/or revisions to HMA Plans. Update HMA plans to include greater sage-grouse objectives.”

The Bighorn Basin Wild Horse management Goals and Objectives are consistent with the Wild Horse and Burros Act, and provide appropriate guidance for future implementation level decisions that may adjust herd AMLs.

### *Travel Management*

**Issue Number:** PP-WY-BIGHORN-GRSG-15-09-2

**Organization:** American Exploration & Mining Association

**Protestor:** Laura Skaer

**Issue Excerpt Text:** The restrictions on motorized travel will have an inadequately defined and significant adverse effect on mining and will significantly interfere with exploration and development of mineral resources on these lands. Limiting access to public lands to existing or designated routes may make economic exploration and development of some mineral deposits impossible. Maintaining lands available for mineral entry is a hollow gesture if the lands are inaccessible or surrounded by lands on which infrastructure, such as roads, cannot be located. The location of mineral

resources is determined by geology; therefore, mineral deposits can only be explored and developed where they are found. Consequently, the de facto withdrawals associated with the travel and transportation and other surface use restrictions (i.e. disturbance cap) will result in significant economic harm to the counties and residents within the planning area that contain locatable minerals, and to any company whose mineral deposit is located in a GRSG habitat areas.

**Issue Number:** PP-WY-BIGHORN-GRSG-15-09-4

**Organization:** American Exploration & Mining Association

**Protestor:** Laura Skaer

**Issue Excerpt Text:** The widespread travel restrictions under the Proposed Action

discussed in Chapter 2 at 2-75 conflict with the rights of locators of claims, including rights of ingress and egress. By limiting travel to existing and designated routes, prohibiting upgrades of existing routes and creation of new routes, and imposing potentially substantial seasonal constraints will substantially interfere with and likely obstruct exploration and development of existing and future mining claims. Unless claims, both existing and future, are located near or adjacent to existing or designated routes, exploration and development of these claims could be impossible.

These travel restrictions substantially impair the rights of claim holders to access their claims and are thus completely inconsistent with FLPMA § 1732(b). In addition to impairing the rights of locators, the travel restrictions also illegally constrain access to claims (i.e., access to the land on which a claim is located). These illegal travel restrictions constitute a de facto withdrawal from mineral entry of nearly 2 million acres of land in the planning area (see Ch. 2 at 2-75).

**Issue Number:** PP-WY-BIGHORN-GRSG-15-09-5

**Organization:** American Exploration & Mining Association

**Protestor:** Laura Skaer

**Issue Excerpt Text:** These travel and transportation management restrictions are unlawful because they conflict with the rights granted by § 22 of the General Mining Law and 30 USC 612(b) (Surface Use Act), which guarantee the right to use and occupy federal lands open to mineral entry, with or without a mining claim, for prospecting, mining and processing and all uses reasonably incident thereto, including but not limited to ancillary use rights, and rights of and associated with ingress and egress. By closing routes, including

primitive roads and trails not designated in a travel management plan, the BLM will interfere with potential access to minerals as well as the public's right-of-way across Federal lands.

**Issue Number:** PP-WY-BIGHORN-GRSG-15-09-6

**Organization:** American Exploration & Mining Association

**Protestor:** Laura Skaer

**Issue Excerpt Text:** Further, a primary objective of the travel and transportation management program is to ensure access needs are balanced with resource management goals and objectives in resource management plans (BLM Manual 1626 at .06). However, the BLM has not balanced access needs associated with minerals, or any other use, and instead places a preference on protection of the GRSG.

**Issue Number:** PP-WY-BIGHORN-15-24-1

**Organization:** The Wilderness Society

**Protestor:** Nada Culver

**Issue Excerpt Text:** The BLM can look to its standard guidance for completing travel plans as part of land use planning, which directs the agency to complete travel and transportation designations within 5 years after signing a Record of Decision. BLM Manual 626.06(B)(3); BLM Handbook 8342(J)(C)(ii). Using this approach as a guide, the BLM must also come up with an action plan and planning schedule, and can prioritize areas that will be completed (BLM Handbook 8342 (1V)(B)).

**Issue Number:** PP-WY-BIGHORN-GRSG-15-23-6

**Organization:** WYO-BEN

**Protestor:** Rick Magstadt

**Issue Excerpt Text:** The Travel management restrictions violate the General Mining Law access across federal lands, and attaches a right to valid mining claims supported by discovery located pursuant to the General Mining Law, which provides that mineralized public lands must be “free and open to exploration and purchase, and ... occupation” (30 USC § 22). This right is well recognized by both the Department of the Interior and the courts. See Mespelt & Almasay Mining Co., 99 IBLA 25, 27, GFS (MIN) 83 (1987); see also Herbert I Stewart, 82 IBLA 329, GFS (MIN) 125 (1984); United States v. 9,947.71 Acres of Land, 220 F. Supp. 328 (D. Nev. 1963); Solicitor's Opinion, Rights of Mining Claimants to Access over Public Lands to Their Claims, 66 I.O. 361 (1959).

The restrictions on motorized travel will have an inadequately defined and significant adverse effect on mining and will significantly interfere with exploration and development of mineral resources on these lands. Limiting access to public lands to existing or designated routes may make

economic exploration and development of some mineral deposits impossible. Maintaining lands available for mineral entry is a hollow gesture if the lands are inaccessible or surrounded by lands on which infrastructure, such as roads, cannot be located.

These travel and transportation management restrictions are unlawful because they conflict with the rights granted by § 22 of the General Mining Law and 30 U.S.C. 612(b) (Surface Use Act), which guarantee the right to use and occupy federal lands open to mineral entry, with or without a mining claim, for prospecting, mining and processing and all uses reasonably incident thereto, including but not limited to ancillary use rights, and rights of and associated with ingress and egress. By closing routes, including primitive roads and trails not designated in a travel management plan, the BLM will interfere with potential access to minerals as well as the public's right-of-way across Federal lands.

### **Summary:**

The Bighorn Basin PRMP/FEIS travel and transportation restrictions violate Section 22 of the General Mining Law and the Surface Resources Act by creating de facto withdrawals and affecting rights of ingress and egress. The BLM must identify a schedule for completing travel plans within 5 years after the ROD is signed for the Bighorn Basin PRMP/FEIS.

### **Response:**

General Mining Act of 1872 (30 USC 22) states that:

“Except as otherwise provided, all valuable mineral deposits in lands belonging to the United States, both surveyed and unsurveyed, shall be free and open to exploration and purchase, and the lands in which they are found to occupation and purchase, by citizens of the United States and those who have declared their intention to become such, under regulations prescribed by law, and according to the local customs or rules of miners in the several mining districts, so far as the same are applicable and not inconsistent with the laws of the United States.”

Surfaces Resources Act of 1955 (30 USC 612) states that:

“(b) Reservations in the United States to use of the surface and surface resources; Rights under any mining claim hereafter located under the mining laws of the United States shall be subject, prior to issuance of patent therefor, to the right of the United States to manage and

dispose of the vegetative surface resources thereof and to manage other surface resources thereof (except mineral deposits subject to location under the mining laws of the United States). Any such mining claim shall also be subject, prior to issuance of patent therefor, to the right of the United States, its permittees, and licensees, to use so much of the surface thereof as may be necessary for such purposes or for access to adjacent land: Provided, however, That any use of the surface of any such mining claim by the United States, its permittees or licensees, shall be such as not to endanger or materially interfere with prospecting, mining or processing operations or uses reasonably incident thereto”.

BLM H-3809-1 “Mining claimants (or their authorized designees) are entitled to non-exclusive access to their claims. Access to mining operations must be managed in a way to balance this right and the requirement to prevent unnecessary or undue degradation (FLPMA, 43 CFR 3809.415). Any access to an operation must be reasonably incident as defined by the Use and Occupancy regulations found at 43 CFR 3715.

Non-exclusive access, while guaranteed to mining claimants or their designee by the Mining Law, is not unfettered. In special status areas, where the operations would present a risk to the resources that support the special status area designation, the BLM can condition access placement, design, and periods of use where needed to limit impacts. After considering the effects on other resources, the BLM may limit access to constructed roadways or decide in some circumstances that access by means other than a motor vehicle (such as via aircraft or pack animal) is sufficient for the operator to complete their desired activity.”

The Bighorn Basin PRMP/FEIS is consistent with BLM direction to balance mining claimant’s right and requirement to access claims with FLPMA’s requirement to prevent unnecessary or undue degradation.

Upon approval of the Bighorn Basin PRMP/FEIS, the BLM will complete activity level travel plans (Bighorn Basin Record #6041). The BLM will comply with all policy during subsequent activity level travel planning, including BLM’s policy that “if the decision on delineating travel management networks is deferred in the land use plan to the implementation phase, the work normally should be completed within 5 years of the signing of the ROD for the RMP.” (BLM Land Use Planning Handbook H-1601-1, p. C-18).

### **Clarifications and Clerical Errors**

**Issue Number:** PP-WY-BIGHORN-GRSG-15-04-15

**Organization:** Devon Energy Production Company

**Protestor:** Dru Bower-Moore

**Issue Excerpt Text:** Proposed Record No. 4118 indicates that surface use should be restricted within PMHA from March 15 to

June 30 each year. Proposed Bighorn RMP, pg. 2-154 – 2-155. The BLM’s proposed stipulation in Appendix G, however, states that surface use should be restricted from March 1 to June 30. Proposed Bighorn RMP, Appd. G, pgs. G-18 – G19. Executive Order 2011-5 only limits activities from March 15 to June 30. The BLM’s timing restriction is thus inconsistent with not only the Wyoming Executive Order, but even the

text of the Proposed Bighorn RMP itself. The BLM must correct this inconsistency. Similarly, with respect to timing limitations within GHMA states that surface use will be limited from March 15 to June 30 within two miles of an active lek. Proposed Bighorn RMP, pg. 2-154 – 2-155. Nonetheless, the stipulation attributable to this Management Action indicates that surface use will be limited from March 1 to June 30 (Proposed Bighorn RMP, Appd. G, pg. G-20).

**Issue Number:** PP-WY-BIGHORN-GRSG-15-04-20

**Organization:** Devon Energy Production Company

**Protestor:** Dru Bower-Moore

**Issue Excerpt Text:** The BLM must also clarify its management approach for trails. (Record Nos. 7298 through 7300 and 7302 through 7304), the BLM appears to provide Map 92 to demonstrate the segments of certain trails where setting contributes or does not contribute to an important aspect of the integrity for each trail. Nowhere in the Proposed RMP's, however, does the BLM refer to Map 92 or explain how the proposed management actions would apply to the designations on Map 92 under the heading "Setting Consideration Zone."

**Issue Number:** PP-WY-BIGHORN-GRSG-15-11-5

**Organization:** Wyoming Outdoor Council

**Protestor:** Dan Heilig

**Issue Excerpt Text:** As described in the proposed Bighorn Basin plan, the oil and gas lease stipulation for greater sage-grouse would limit "surface-disturbing and disruptive activities in mapped sage-grouse winter habitats/concentration areas from December 1 to March 14" (Appendix G,

Table G-1, Management Action 4119).

However, Table 4-23 on page 4-296 shows a different date range for this TLS stipulation, which begins on November 15th.

**Issue Number:** PP-WY-BIGHORN-GRSG-15-12-2

**Organization:** Petroleum Association of Wyoming

**Protestor:** Esther Wagner

**Issue Excerpt Text:** Proposed RMP, pg. 2-154 – 2-155. BLM's proposed stipulation in Appendix G, however, states that surface use should be restricted from March 1 to June 30. Proposed RMP, Appd. G, pgs. G-18 – G19. Executive Order 2011-5 only limits activities from March 15 to June 30. The BLM's timing restriction is thus inconsistent with not only the Wyoming Executive Order, but even the text of the Proposed RMP itself. BLM must correct this inconsistency. Similarly, with respect to timing limitations within general habitat management areas (GHMA) surface use will be limited from March 15 to June 30 within two miles of an active lek. Proposed RMP, pg. 2-154 – 2-155. Nonetheless, the stipulation attributable to this Management Action indicates that surface use will be limited from March 1 to June 30. Proposed RMP, Appd. G, pg. G-20. Again, this timeline is inconsistent both with Wyoming Executive Order 2011-5 and the BLM's proposed Management Action in Chapter 2.

**Issue Number:** PP-WY-BIGHORN-GRSG-15-12-34

**Organization:** Petroleum Association of Wyoming

**Protestor:** Esther Wagner

**Issue Excerpt Text:** The BLM must also clarify its management approach for trails. (Record Nos. 7298 through 7300 and 7302

through 7304), BLM appears to provide Map 92 to demonstrate the segments of certain trails where setting contributes or does not contribute to an important aspect of the integrity for each trail. Nowhere in the Proposed RMP's; however, does the BLM refer to Map 92 or explain how the proposed management actions would apply to the designations on Map 92 under the heading "Setting Consideration Zone."

**Issue Number:** PP-WY-BIGHORN-GRSG-15-13-1

**Organization:** Northwest Wyoming OHV Alliance

**Protestor:** Dana Sander

**Issue Excerpt Text:** Diamond Basin Area, in the FEIS defines 4,421 acres, existing historical use 5,000 acres for a Total Error of 579 acres. The area south of the Torch Light road that is historically a parking area

that is heavily used for recreation. This missing area in the Open area designation has been documented and submitted to the BLM. They have installed a Kiosk in this area after our consultations and communications but the maps and acreage does not reflect this error.

**Issue Number:** PP-WY-BIGHORN-GRSG-15-13-2

**Organization:** Northwest Wyoming OHV Alliance

**Protestor:** Dana Sander

**Issue Excerpt Text:** Sheep Mountain and Trapper Creek Closures to motorized use in FEIS Table R-1. This is an error and should be defined as in the Worland area not Cody to eliminate confusion with the Sheep Mountain in the Cody area which is open to motorized use.

## Summary

Several clerical errors have occurred in the development of the plan. These include the following:

- An error in the description of timing restrictions between Chapter 2 (pg. 2-154 – 2-155) and Appendix G (G-18 – G19) wherein the starting date for restriction varies from March 1 to March 15
- There is no description of how the allocations relating to setting along Historic Trails will be applied, specifically with regard to Map 92
- Winter Habitat stipulations vary between Table 4-23 and Table G-1
- A mapping error relative to the Diamond Basin area did not include the parking area south of Torch Light Road.
- Table R-1 should point out that the closure of Sheep Mountain and Trapper Creek apply to those areas in the Worland Field Office and not the Cody Field Office as to avoid confusion with similarly named areas

## Response

These errors are noted. The following clarifications are provided below:

- Appendix "G" will be updated to reflect the corrected dates for nesting habitat (March 15-June 30) and winter habitat (December 1-March14).



- Historic Trails – The buffer protecting setting would not be implemented on non-contributing portions of the trail.
- Diamond Basin – The Diamond Basin area will be managed as described in the plans. The maps provided are meant to be read a large scale.
- Sheep Mountain and Trapper Creek refer to the WSAs within the Worland Field Office. These changes have been made.